Affirmed by a divided court — [illegible]

Reheard
March
24. 74

"20-7 Reversed"

Ashton }
Hoar } Compl'lt

Morris & }
Durant } Deft

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~523.~~ 75

THE FIRST NATIONAL BANK OF WASHINGTON AND WILLIAM S. HUNTINGTON, PLAINTIFFS IN ERROR,

VS.

THE STATE OF TEXAS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 11, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 523.

THE FIRST NATIONAL BANK OF WASHINGTON AND WILLIAM S. HUNTINGTON, PLAINTIFFS IN ERROR,

VS.

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3 *Original bill.—Filed May* 8, 1868.

Supreme court of the District of Columbia.

THE STATE OF TEXAS
vs.
GEORGE W. WHITE, JOHN CHILES, AND OTHERS. } 1280. Equity docket 9.

To the honorable the justices of the supreme court of the District of Columbia:

The State of Texas, one of the United States of America, brings this bill against George W. White, a citizen of the State of Tennessee; John Chiles, a citizen of the State of New York; The First National Bank of Washington, a body corporate within the District of Columbia, under and by virtue of an act of Congress, entitled An act to provide a national currency secured by a pledge of U. S. bonds, and to provide for the circulation and redemption thereof; and William S. Huntington.

4 And thereupon the said State of Texas complains, and says:

That the act of Congress, approved September the 9th, A. D. 1850, proposed to the State of Texas the establishment of her northern and western boundaries, and the relinquishment of her claims upon the United States; and, in consideration thereof, the United States offered to pay the said State of Texas the sum of $10,000,000, in five per cent. stock of the United States, of which not more than $5,000,000 were to be issued until certain releases had been filed at the Treasury of the United States.

That the State of Texas, by an act of her legislature, approved November 25th, A. D. 1850, accepted the proposed terms of settlement, and the President of the United States, by his proclamation, issued December 13th, A. D. 1850, in accordance with the terms of the said act of Congress, of September 9th, 1850, declared the said act to be in full force and operation.

5 That, by virtue of the authority contained in the said act of Congress, of September 9th, A. D. 1850, the Secretary of the Treasury issued the $5,000,000 of bonds therein referred to, in sums of $1,000 each, bearing date January 1st, A. D. 1851, which were denominated "United States Texan indemnity bonds," and which certified and set forth in substance as follows: "It is hereby certified that the United States of America are indebted unto the State of Texas or bearer in the sum of one thousand dollars, redeemable after the thirty-first day of December, 1864, with interest at five per centum per annum, payable semi-annually on the first days of January and July in each year, at the Treasury of the United States, on presentation and surrender of the proper coupon hereto annexed. This debt is authorized by act of Congress, approved September 9th, A. D. 1850. It is recorded in the office of the register of the United States Treasury, and is transferable on delivery.

"Washington, January 1st, A. D. 1851."

The coupons attached to said bonds set forth that there is "due from
the United States to the bearer twenty-five dollars" for a desig-
6 nated six months' interest on a certain bond, specifying the number
thereof.

These bonds, although bearing date January 1st, A. D. 1851, were not, in fact, delivered to the said State of Texas until about one year

thereafter, but, at the time of the delivery thereof, the interest coupons
to January 1st, 1852, were paid. The cause of delay in the delivery of
said bonds was the want of authority in any person to receive them,
which want of authority was supplied by the act of the legislature of
the State of Texas, approved December 16th, A. D. 1851. The first
section of said act provided that it should be "the duty of the comp-
troller of public accounts of this State to proceed to the city of Wash-
ington, District of Columbia, and receive from the Secretary of the
Treasury, or other proper authority of the Government of the United
States, the five millions of dollars of the stock to which the State of
Texas became unconditionally entitled in the act of Congress;" "to
sign and deliver proper receipts for the same, and, when received, to
deposit them in the treasury of the State of Texas, to be disposed
7 of as may be provided by law: Provided, that no bond issued as
aforesaid as a portion of the said five millions of stock, payable
to bearer, shall be available in the hands of any holder until the same
shall have been indorsed in the city of Austin by the governor of the
State of Texas." The second section of the act authorized the comp-
troller to receive "all the interest which will remain due and unpaid on
the said five millions of dollars of bonds on the first of January,
eighteen hundred and fifty-two," and to deposit the same in the State
treasury of the said State of Texas.

And the State of Texas says that, upon the passage of the said act of December 16th, 1851, the comptroller of the said State of Texas proceeded to Washington, and received the said five millions of stock in United States five per cent. coupon bonds, and during the month of January, 1852, deposited the same in the State treasury, as required by said act.

That a large portion of said bonds, and each and all thereof here-
8 inafter particularly referred to and described by their respective
numbers, remained in the possession of this complainant until
sometime in the year A. D. 1861, or shortly thereafter, when they were
seized and taken by a certain unlawful combination of individuals in
armed hostility to the Government of the United States;

That said combination seized upon the archives, treasury, and property of the said State of Texas, and claiming to exercise political authority over the territory, within the limits of the said State, established a certain organization, denominated a "military board," for the purpose of accomplishing the overthrow of the said government of the State of Texas under the Constitution of the United States, by withdrawing said State from the Federal Union, and for the purpose of carrying on war against the Government of the United States;

That said military board, in attempted execution of said purpose, on
or about the 12th day of January, A. D. 1865, sold and delivered to the
said George W. White and John Chiles one hundred and thirty-
9 five of said United States Texas indemnity bonds, with coupons
attached, which were then in the State treasury, and which had
been unlawfully seized as aforesaid, and seventy-six other of said bonds,
with coupons attached, supposed to be upon deposit in England, as will
more fully appear by reference to a copy of a certain contract of sale
herewith filed, marked "Exhibit A," and prayed to be taken as part of
this bill.

And the said State of Texas avers and charges that said contract was made without authority in that behalf; that the same was contrary to law, and contemplated and purposed as part of the consideration thereof, an unlawful and illegal object, to wit, the overthrow of the authority of the Government and Constitution of the United States, and the same cannot bind or affect the right and title of this complainant in and to said bonds, and is incapable of transferring any right or title thereto, and that no right or title thereto passed to the said White and Chiles by said sale and delivery.

10 And your orator further showeth that, if said contract of sale can be regarded as of any obligation by reason of having been executed by the authority of a de facto government, that the said White and Chiles did not fulfill and perform the conditions and stipulations on their part to be performed and fulfilled as in said contract set forth, but therein wholly failed and made default, and that said unlawful usurpation and de facto government having been overthrown, the said White and Chiles are liable, by reason of their said default as aforesaid, to restore said bonds to this complainant.

And the said State of Texas further represents that a portion of said bonds so delivered to the said White and Chiles as aforesaid, were by them subsequently sold and delivered to various parties after their maturity, and that none thereof were by said White & Chiles so sold or disposed of until after they had matured and overdue; and that *if* said bonds, said defendant, the said First National Bank of Washington, &c., the said William S. Huntington, now hold or claim the
11 following, that is to say, bonds numbered 4226, 4227, 4229, 4703,
4706, 4812, 4813, 4825, 4844, 4927, 4960, 4963, with coupons attached, so delivered to said White & Chiles as aforesaid.

And the said State of Texas avers and charges that said bonds, and each of them, were placed in the hands of said-named parties, for the purpose of collecting the proceeds thereof from the Government of the United States, as the agent of the said White and Chiles, or in trust for them; or that the said bonds were purchased from the said White and Chiles by the said-named parties respectively, with express notice of the circumstances and manner in which the same had been obtained and converted by the said White & Chiles, as herein set forth.

And the said State of Texas further charges that the said holders of said bonds did not obtain the same in good faith, and avers that all of said bonds and coupons were overdue on their face at the time
12 they were respectively obtained by said defendants, and each of
them, and that they took the same with full notice of the title of this complainant thereto, and with notice that said White and Chiles had no valid and legal title to the same.

And the said State of Texas further avers and charges that said bonds were never endorsed in such manner as is required by law to pass the title of this complainant thereto.

And said State of Texas further says that said parties, and their agents, are now seeking and demanding payment of the bonds so held by them ressectively, as aforesaid, at the Treasury Department of the United States.

And the said State of Texas further represents that the said White and Chiles are unable to pay the amount due to your orator in the premises; and this complainant believes and charges that without the special interposition of this honorable court, it will lose all of said bonds
13 hereinbefore described, and the proceeds thereof.

And the said State of Texas avers that said defendants and their agents design and intend to collect the proceeds of said bonds, and apply the same to the use of said defendants, respectively, in disregard of the just rights of this complainant, whereby this complainant will sustain great and irreparable loss and injury in the premises.

To the end, therefore, that said defendants may, if they can, show why this complainant should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say, that said Chiles and White may each, separately 14 and respectively, answer for himself, interrogatories numbered 1, 2, 3, 4, and 5—

1. Were you parties to the contract hereto attached, marked Exhibit A; were the bonds, stock, or securities described in this bill by their numbers delivered to you and each of you under said contract; and if they were so delivered, state the date and number of each, and where they were payable; and if any coupons attached the same, the date, and amount of such coupons, and the number thereof, and when the same were respectively payable, and where, and by whom. Set forth in full, and particularly, the words and figures of one bond of each class so received by you or either of you.

2. What disposition have you made of the bonds or stock delivered to you, and designated by numbers in this bill under said con- 15 tract, copy of which is hereto attached, marked Exhibit A? State particularly the disposition made of each bond and coupon; to whom was each particular bond delivered; and if sold, to whom, and when, and for what consideration. State particularly the terms of sale, and what consideration was agreed upon to be paid therefor, and how much thereof has been paid; and state what interest you now have in said bonds, or any of them, and what part of the proceeds of said bonds, or any of them, or the coupons attached thereto, is to be paid to you.

3. State particularly, as to each bond and coupon designated by numbers in this bill, and so delivered to you under said contract, hereto attached, marked A; where the same now is, and in whose possession, and for what purposes, and upon what trust the same is held.

4. State what was the market price of gold in New York at the 16 particular date at which you sold said bonds, designated by numbers in this bill, or any of them. Give the particular date of each sale; the number of the bonds sold; the place where sold; the party to whom sold; the consideration for such sale, and the amount of premium at which gold was selling in the New York market at the date of each sale of any of such bond or bonds by you.

5. What articles were delivered by you under said contract, herewith filed, marked Exhibit A?

That each of said defendants, except the said White and Chiles, may severally and respectfully answer interrogatories numbered 6 and 7.

6. State whether or not you hold or have held since January 12th, 1865, any United States Texan indemnity bonds; whether you have, or since said date have had, any of said bonds in your possession or 17 under your control, and if so, when, where, and from whom you obtained the same. State particularly the number of each one of said bonds, so held by you, or under your control, or in which you have any interest; when, where, and from you obtained each of said bonds; what consideration you agreed to pay for each and all of said bonds, and how much of such consideration has been paid; and whether any person other than yourself is interested in such bond or bonds, or any of them, or the proceeds thereof; and if any such person, what person, in what particular bond, or the proceeds of what particular bond is

such person so interested; and if you held any of said bonds since said 12th day of Jan'y, 1865; and do not now hold the same; when and how you disposed of them, and in what the proceeds thereof have been invested.

7. If you hold any United States Texan indemnity bonds, state whether or not you obtained the same or any portion thereof from Geo. W. White and John Chiles, or either of them, and state particu-
18 larly all the circumstances under which said bonds come into your possession or under your control; whether the same were purchased by you or pledged with you as security for money advanced; and if as security for money advanced, for what sum; to whom the same was advanced; upon what terms and for what purpose the same was to be used; and if the same were purchased, state when, upon what consideration, and what portion of such consideration is paid and what yet due. And if any of said bonds are in your possession or under your control, and were not obtained from said Chiles and White or either of them, state from whom you obtained your interest in and to the same, and whether or not at the time you obtained such interest you knew or had information or notice, or had reason to believe that such bonds had been in the possession of said White and Chiles, or either of them, and whether you knew or had information or notice of the circumstances and manner in which the
19 same came into the possession of the said White and Chiles or reason to believe that they had obtained the same from the acting government of the State of Texas, during the late civil war, and whilst the said acting government of the State of Texas was engaged in war against the United States Government. And state particularly what was the amount of premium in gold in the New York market at the dates upon which you obtained an interest in each of said bonds, severally and respectively.

And the State of Texas prays that the United States writ of injunction may be issued by this honorable court, directed to the said defendants and their agents, especially enjoining and restraining them and their agents, and all others, their agents, aiders, and abettors, from asking for, demanding, or receiving from the United States, or any officer thereof, the amount due on said bonds, or any part thereof, as well as the amount due on the coupons thereto attached, or any
20 part thereof, or any other securities in which the said bonds and coupons may have been converted, and that the said bonds, and each of them with the coupons thereto attached, and the securities in which the amount due on said bonds may have been converted, may be delivered to the said State of Texas, or its authorized agent, and for such other and further relief in the premises as may to your honors seem just and proper; may it please this honorable court to grant unto complainant a writ of subpœna directed to John Chiles, George W. White, William S. Huntington, and The First National Bank of Washington, therein requiring them, and each of them, at a certain day to appear before this honorable court and answer this bill, and to abide and perform such decree therein as to this honorable court shall seem meet.

R. J. BRENT,
GEORGE TAYLOR,
R. T. MERRICK,
Solicitors and of Counsel.
B. H. EPPERSON,
Attorney for the State of Texas.

21 George W. Paschal, being sworn, says that he is the duly-
authorized attorney of the State of Texas, empowered to institute proceedings on her behalf for the recovery of the bonds mentioned and referred to in the aforegoing bill, and the proceeds thereof; and that he believes the statements, allegations, and averments in said bill contained, to be true, as the same are therein set forth.

GEO. W. PASCHAL.

Subscribed and sworn to before me, April 29, 1868.

R. J. MEIGS, *Clerk.*

Exhibit A to bill.

Article of agreement made and entered into this the 12th day of January, 1865, between the military board of the State of Texas and George W. White, of Austin, Texas, and John Chiles, of Cameron Coun-
22 ty, Texas, under the style of White & Chiles, this agreement of
the military board of the State of Texas and said White & Chiles, have agreed to and with each other in manner as follows, viz:

I. The military board sell to Messrs. White & Chiles one hundred and thirty-five United States Texas indemnity bonds, with coupons attached, now in the State treasury, principal and interest amounting to one hundred and fifty-six thousand two hundred dollars, and seventy-six U. S. Texas indemnity bonds with coupons attached, principal and interest amounting to eighty-seven thousand four hundred dollars; said seventy-six bonds and coupons supposed to be upon deposit with Droege & Co., England.

II. In payment of said bonds and coupons now in the treasury of the State, the said White and Chiles agree and bind themselves to deliver to the military board at Austin, Texas, with as little delay as possible, twenty-five thousand (25,000) pairs of cotton cards of the
23 best quality, equal to the best No. 10 Whitmore cotton cards in
every respect, the bonds and coupons to be taken in settlement therefor at par, at the rate of five dollars per pair. For the remainder of the bonds and coupons in the State treasury, the said White & Chiles are to deliver to the military board at Austin, Texas, medicines of the best quality, and of the kinds to correspond with the list to be furnished them by the said board, which list is to be considered a part of this contract. In payment for said medicines, said bonds and coupons are to be taken at par; the price to be allowed for the said medicines to be the same as that allowed for the cards as compared with the cost of the said medicines and cards delivered at Austin, Texas, as shown by original invoices of cards and medicines as delivered at Austin, the cards and medicines to be bought in the cheapest market and at specie rates.

III. The said White & Chiles agree to furnish the military board the original invoices of cost of said cards and medicines, together
24 with an accurate amount of the cost of delivery of the same, to
be a basis of settlement for said medicines.

IV. In payment for the bonds in England, in the hands of Droege & Co., the said White & Chiles agree and bind themselves to deliver to the military board in Austin, Texas, No. 10 cotton cards, equal in quality to the best Whitmore cards, to the extent of one-half of said bonds and coupons, taking said bonds and coupons in payment thereof at the rate of five dollars per pair for said cotton cards, the other half of said bonds to be paid for in medicines, in quality and kind as heretofore described,

and to correspond with the list of the military board, furnished, which medicines the said White & Chiles agree to diliver to the military board, at Austin, Texas, upon the same terms and conditions heretofore agreed upon with regard to medicines, to be paid for with bonds and coupons now in the treasury, the bonds and coupons in England to be taken at par,
the cards and medicines to be delivered with as much expedition
25 as possible, and the whole contract to be complete within six
months from the date of this contract. The board agree to deliver to the said White & Chiles one hundred and thirty-five bonds and coupons, principal and interest amounting to one hundred and fifty-six thousand and two hundred dollars, now in the treasury, upon the said White & Chiles furnishing satisfactory security to the board. Should they fail to execute said contract in the delivery of the cards and medicines in accordance with agreement, they will pay said board for such bonds and coupons of the United States, rating them at eighty (80) cents upon the dollar, in 7 or 8 per cent. bonds of the State of Texas; or treasury warrants of the State of Texas, at par. If any of the cards or medicines purchased by said White & Chiles, in the fulfillment of this contract, should, by unavoidable accident, be lost, or delayed being delivered, by the public enemy, a reasonable time shall be allowed to fill the contract.

26 VII. Should any disagreement arise as to quality or condition of either of the cards or medicines on delivery, said matter shall be referred to disinterested parties, one chosen by each of the parties, and the two shall have authority to call in a third person, all to act under oath; and their decision shall be binding upon all parties.

Signed at Austin, Texas, the day and date above written.

P. MURRICH,
Gov. and President Ex-officio of the Military Board.
J. S. HOLMAN,
N. B. PEARCE,
Members of the M. B.
GEO. W. WHITE.
JNO. CHILES.

27 *Summons to answer.—Issued May 8, 1868.*

In the supreme court of the District of Columbia, May 8th, 1868.

THE STATE OF TEXAS, PLAINTIFF,
vs.
GEORGE W. WHITE, JOHN CHILES, THE First National Bank of Washington, D. C., and Wiliam S. Huntington, defendants. } 1280. Equity docket 9.

The President of the United States to George W. White, John Chiles, The First National Bank of Washington, and William S. Huntington:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appear-
28 ance in this suit in the clerk's office, on or before the special term
to which this writ is returnable; otherwise, the bill may be taken for confessed.

Marshal's return.

"Summoned defendants W. S. Huntington and The First National Bank, and Secretary of the Treasury. Not to be found, the others. May 9, 1868."

Restraining order.—Filed May 8, 1868.

THE STATE OF TEXAS
vs. } 1280. Eq. docket 9.
GEORGE W. WHITE ET AL.

Upon consideration of the bill filed in this cause, it is ordered this 8th of May, 1868, that an injunction issue as prayed, restraining and enjoining the defendants, their assignees, attorneys, agents, aiders, and abettors, from asking for, demanding, or receiving from the United States, or any officer thereof, the amount due on the following described United
29 States Texan indemnity bonds, dated 1st January, 1851, viz, numbered, 4226, 4227, 4229, 4700, 4706, 4812, 4813, 4825, 4844, 4927, 4929, 4960, 4963, and all coupons thereto attached or belonging, or the proceeds of said bonds and coupons, or any of them, in case the same have been converted or sold and the proceeds thereof shall be remaining in the Treasury of the United States, or in the hands of any person whatever, the said injunction to continue until the further order of this court; and it is further ordered that the defendants, and each of them, show cause, at ten o'clock a. m., on the 30th day of May instant, why the said injunction shall not be continued until the final hearing of said bill; provided a copy of this order be served on the said defendants, or any of them, on or before the 15th day of May, inst.

By order of the court.

30 *Decree pro confesso.—Filed J.*

THE STATE OF TEXAS
vs.
GEORGE W. WHITE, JOHN CHILES, W. S. Huntington, First National Bank, Hugh McCulloch, et al. } 1280. Eq. dock. 9.

Upon the motion of Richard T. Merrick, esq., solicitor for complainant, the bill and the matters thereof are hereby taken as confessed by defendants, W. S. Huntington, cashier, and The First National Bank, of Washington—they having failed to answer said bill.

By the clerk.

31 *Amended bill.—Filed April* 28, 1868.

Supreme court of the District of Columbia.

THE STATE OF TEXAS
vs. } 1280. Eq. doc. 9.
GEORGE W. WHITE, JOHN CHILES, & OTHERS.

To the honorable the judges of the supreme court of the District of Columbia, sitting in equity:

1. The State of Texas, one of the United States of America, brings

this bill against George W. White, a citizen of the State of Tennessee; John Chiles, a citizen of the State of New York; The First National Bank of Washington, a body corporate of the District of Columbia, under an act of Congress to provide a national currency, securing a pledge of United States bonds, and to provide for the circulation and redemption thereof; Hugh McCulloch, a citizen of the State of Indiana, now in the District of Columbia; Robert W. Tayler, a citizen of Ohio, now in the District of Columbia, and William S. Huntington.

32 2. The State sues in its own right.

The defendants are sued in their own right, except Robert W. Taylor, who is sued as trustee.

And thereupon the said State of Texas complains and says:

That the act of Congress, approved September the 9th, A. D. 1850, proposed to the State of Texas the establishment of her northern and western boundaries, and the relinquishment of her claims upon the United States; and in consideration thereof, the United States offered to pay the said State of Texas the sum of $10,000,000, in five per cent. stock of the United States, of which not more than $5,000,000 were to be issued until certain releases had been filed at the Treasury of the United States.

That the State of Texas, by an act of her legislature, approved November 25th, A. D. 1850, accepted the proposed terms of settlement, and the President of the United States, by his proclamation issued December 13th, 1850, in accordance with the terms of the said act
33 of Congress of September 9th, 1850, declared the said act in full
force and operation.

That, by virtue of the authority contained in the said act of Congress of September 9th, A. D. 1850, the Secretary of the Treasury issued the $5,000,000 of bonds therein referred to, in sums of $1,000 each, bearing date January 1st, A. D. 1851, which were denominated "United States Texan indemnity bonds," and which certified and set forth in substance as follows: "It is hereby certified that the United States of America are indebted unto the State of Texas or bearer, in the sum of one thousand dollars, redeemable after the thirty-first day of December, 1864, with interest at five per centum per annum, payable semi-annually on the first days of January and July in each year, at the Treasury of the United States, on presentation and surrender of the proper coupon hereto attached. This debt is authorized by act of Congress approved September 9tn, A. D. 1850. It is recorded in the office of the Register of the United States Treasury, and is transferrable on delivery. Washington, January 1st, A. D. 1851."

34 The coupons attached to said bonds set forth that there is "due from the United States to the bearer twenty-five dollars" for a designated six months' interest on a certain bond, specifying the number thereof.

These bonds, although bearing date January 1st, A. D. 1851, were not in fact delivered to the said State of Texas until about one year thereafter, but at the time of the delivery thereof the interest coupons to January 1, 1852, were paid. The cause of delay in the delivery of said bonds was the want of authority in any person to receive them, which want of authority was supplied by the act of the legislature of the State of Texas, approved December 16th, A. D. 1851. The first section of said act provided that it should be "the duty of the comptroller of public accounts of this State to proceed to the city of Washington, District of Columbia, and receive from the Secretary of the Treasury, or other proper authority of the Government of the United States, the five

35 millions of dollars of stock to which the State of Texas became unconditionally entitled in the act of Congress;" "to sign and deliver proper receipts for the same, and, when received, to deposit them in the treasury of the State of Texas, to be disposed of as may be provided by law: *Provided*, That no bond issued as aforesaid as a portion of the said five millions of stock, payable to the bearer, shall be available in the hands of any holder until the same shall have been endorsed in the city of Austin by the governor of the State of Texas." The second section of the act authorized the comptroller to receive "all the interest which will remain due and unpaid on the said five millions of dollars of bonds on the first day of January, eighteen hundred and fifty-two," and to deposit the same in the State treasury of the State of Texas.

And the State of Texas says that, upon the passage of the said act of December 16, 1851, the comptroller of the said State of Texas proceeded to Washington, and received the said five millions of stock in
36 United States five per cent. coupon bonds, and, during the month of January, 1852, deposited the same in the State treasury, as required by said act.

That a large portion of said bonds, and each and all thereof hereinafter particularly referred to and described by their respective numbers, remained in the possession of this complainant until some time in the year A. D. 1861, or shortly thereafter, when they were seized and taken by a certain unlawful combination of individuals in armed hostility to the Government of the United States.

The said combination seized upon the archives, treasury, and property of the said State of Texas, and claiming to exercise political authority over the territory within the limits of the said State, established a certain organization denominated a "military board" for the purpose of accomplishing the overthrow of the said government of the State of Texas under the Constitution of the United States, by withdrawing said
37 State from the Federal Union, and for the purpose of carrying on war against the Government of the United States.

That said military board, in attempted execution of said purpose, on or about the 12th day of January, A. D. 1865, pretended to sell and did deliver to the said George W. White and John Chiles from one hundred and thirty-five to one hundred and sixty-two of said United States Texas indemnity bonds with coupons attached, which were then in the State treasury, and which had been unlawfully seized as aforesaid, and attempted to sell seventy-six other of said bonds with coupons attached, supposed to be upon deposit in England, as will appear by reference to a copy of a certain contract of sale herewith filed, marked "Exhibit A," and prayed to be taken as part of this bill, and at said date or thereabouts did also dispose of other of said bonds so seized as aforesaid
38 in further execution of the same purpose.

And the said State of Texas avers and charges that said contract was made without authority in that behalf; that the same was contrary to law, and contemplated and purposed as part of the consideration thereof, an unlawful and illegal object, to wit, the overthrow of the authority of the Government and Constitution of the United States, and the same cannot bind or affect the right and title of this complainant in and to said bonds, and is incapable of transferring any right or title thereto, and that no right or title thereto passed to the said White and Chiles by said sale and delivery.

And your orator further showeth that if said contract of sale can be regarded as of any authority of a de facto government that the said White & Chiles did not fulfill and perform the conditions and stipulations

on their part to be performed and fulfilled as in said contract set
forth, but therein wholly failed and made default; and that said
39 unlawful ursurpation and de facto government having been over-
thrown, the said White & Chiles are liable, by reason of said
default as aforesaid, to restore said bonds to this complainant.

And the said State of Texas further represents that a portion of said bonds so delivered to the said White & Chiles, and so disposed of to other parties as aforesaid, were by them subsequently sold and delivered to various parties after their maturity, and that none thereof were received by said White & Chiles, or sold or disposed of by them or the parties to whom the same were delivered by the said board, until after they had matured; and that of said bonds the said defendant The First National Bank, held and claimed bonds numbered as follows,
viz: 4226, 4227, 4229, 4703, 4705, 4706, 4748, 4813, 4825, 4843, 4844,
4899 to 4911, inclusive, 4912, 4913, 4927, 4928, 4929, 4960, 4661, 4962,
4963, number 4228, or some numbers of said bonds unknown to
40 your orator, but whose numbers are known to the defendants,
amounting, with the coupons thereon, to thirty thousand dollars,
or some other such large sum.

And the said State of Texas avers and charges that said bonds and each of them were placed in the hands of said-named party for the purpose of collecting the proceeds thereof from the Government of the United States, as the agent of the said White & Chiles, or in trust for them; or that the said bonds were purchased from the said White & Chiles by the said named party respectively, with express notice of the circumstances and manner in which the same had been obtained and converted by the said White & Chiles, as herein set forth.

And the said State of Texas further charges that the said holders of
said bonds did not obtain the same in good faith, and avers that all of
said bonds and coupons were overdue on their face at the time they
were *overdue on their face at the time they were* respectively ob-
41 tained by said defendants, and each of them; and that they took
the same with full notice of the title of this complainant thereto,
and with notice that said White & Chiles had no valid and legal title
to the same.

And the said State of Texas further avers and charges that said bonds were never endorsed in such manner as is required by law to pass the title of this complainant thereto, which was well known to said parties.

And the plaintiff, the State of Texas, avers and charges that, by reason of the non-endorsement of the said bonds numbered from 4960 to 4963, inclusive, by any governor of the State of Texas, no legal title to the same could be divested out of the claimants or passed to the parties to whom they were delivered, whether the said bonds passed to the said defendants under the aforesaid contract with White & Chiles or in any other way.

And the said State further showeth that said First National
42 Bank, by its cashier, W'm S. Huntington, and its agents, pre-
sented said numbered bonds, with their coupons, at the Treasury
Department for redemption, and with express notice to them and to
Hugh McCulloch, then the Secretary of the Treasury of the United
States, that your orator had filed a bill in the Supreme Court of the
United States to recover all the bonds mentioned in Exhibit A, and that
your orator was otherwise claiming said bonds and coupons as its prop-
erty, the said First National Bank, by its cashier, afterwards, on or
about the 15th day of February, 1867, then and there wrongfully and

illegally agreed with said McCulloch that if he would consent to redeem
said bonds and coupons from the possession and claim of said ,
he or they would previously deposit in the hands of R. W. Tayler
(Comptroller of the Treasury) thirty thousand dollars of seven-thirty
bonds of the issue of fifteenth August, 1864, to be held by him
43 as indemnity for said McCulloch against any personal damage,
loss, or expense in which he might be involved by reason of the
payment or redemption of said bonds and coupons; and in pursuance
of said agreement and confederacy, and with notice aforesaid, the said
First National Bank, by its cashier, William S. Huntington, deposited,
as a condition precedent to the nominal redemption of said bonds, in
the hands of said Tayler, as trustee between the rightful parties, said
bank and Tayler, but in law and fact for the use and benefit of the State
of Texas; and thereupon they allege that the said bank obtained the
proceeds, in gold, of said numbered bonds and coupons attached, and
converted the same to his or their use.

And the said State further avers that, on the first of July, 1867, said
amount of seven-thirty Treasury notes was afterwards converted into or
exchanged for an equivalent amount of five-twenty bonds, United States,
which are still held by said Tayler, in trust for the purpose above
44 stated; it being in part the understanding that said Robert W.
Tayler held such new securities for the use of the State of Texas,
or the said claimants, according as it might be decided by the Supreme
Court of the United States as to the right, to wit, bonds numbered 577,
578, 579, of 5-20 bonds under the act of 3d March, 1865, for $10,000
each.

Your orator, the State of Texas, further showeth that the said First National Bank of Washington held said numbered United States Texas indemnity bonds and claimed the same, either as the agents of said White & Chiles, who had no title thereto, and who obtained possession of said bonds with full notice of your orator's title thereto, or the said First National Bank, by its officers, had bought the same and held them as such purchasers, having full notice at the time of their said purchase, that the said bonds were the property of the State of Texas.

And your orator further avers that, although the said First
45 National Bank, in form, received the proceeds of said indemnity
bonds, including the aforesaid bonds numbered from 4960 to
4963 inclusive; yet, in truth and in fact, the said amount so deposited
in the hands of said Robert W. Tayler, in his character as trustee for
the benefit of whomsoever it might concern, was intended and meant to
be substituted as and for the proceeds of said bonds so nominally redeemed,
and were intended to remain subject to the known claim of said
State of Texas, the same to all intents as if said bonds had remained in
specie in the Treasury and had not been nominally redeemed as aforesaid;
but in any event, your orator is advised and charges, that in a
court of equity it is entitled, at its election, to claim the said amount of
5-20 bonds with its increment, as a fund substituted in lieu of said numbered
Texan indemnity bonds; and the said State does hereby elect to
claim the said amount of 5-20 bonds now held by said Tayler, as
46 aforesaid, in the same manner and to the same extent as it might
and could have claimed the said indemnity bonds if they had not
been nominally redeemed as aforesaid; and in pursuance of said trust,
said Robert W. Tayler at the time of the exchange of the deposit of
7-30s for 5-20s received $816 of gold, for interest from the 15th February
to the first of July; which sum he deposited in the said First National
Bank of Washington, and received therefor their certificate of deposit

No. 3345, dated 1st Oct., 1867; and for interest on said deposit since that time said First National Bank has issued to said Tayler its certificates 6th January, 1868, for $1,200; 17th June (ought to be 17th July,) 1868, for $1,278; 6th January, 1869, for $1,215; making $3,693 gold coin; and which amount of interest said Tayler by his trust was bound to invest, and which he has not invested, because said First National Bank has agreed to pay the interest on the interest received in accordance with the terms of the trust.

And your orator charges that the First National Bank having
47 drawn, as aforesaid, the proceeds of said indemnity bonds
under the conditions and terms of said agreement with said McCulloch, now pretend that the said amount in 5-20 bonds of the United States are not substituted as and for the proceeds of said indemnity bonds, but as a mere fund for the personal indemnity of said McCulloch, for his illegal conduct in the premises; and under said pretence are now claiming and intending to withdraw said amount of 5-20 bonds to and for their own use; and since the decision of the Supreme Court of the United States, said bank has actually demanded the same of said Tayler.

And your orator further represents that the said White & Chiles are unable to pay the amount due to your orator in the premises, and the complainant charges that, without the special interposition of this honorable court, it will lose all of said numbered bonds, and the proceeds
thereof, as well as the said amount of 5-20 bonds substituted
48 therefor and deposited as aforesaid. And your orator further
charges that it would be inequitable to allow the said First National Bank of Washington to convert to their own use said indemnity bonds and coupons, as well as the funds substituted therefor as aforesaid, and remit your orator to a personal action against them or their principals, in which your orator would have no security whatever for its said claim, and might be defeated by technical objections, whereby your orator would sustain great and irreparable loss in the premises.

To the end, therefore, that said defendants may, if they can, show why this complainant should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth
as by the note hereunder written they are respectively required to
49 answer, that is to say, that said White and Chiles may each,
separately and respectively, answer for himself, interrogatories numbered 1, 2, 3, & 4:

1. Were you parties to the contract hereto attached, marked Exhibit A? Were the bonds, stock or securities, described in this bill by their numbers, delivered to you and each of you under said contract? And if they were so delivered, state the date and number of each, and when they were payable; and if any coupons attached, the same, the date, and amount of such coupons, and the number thereof, and when the same were respectively payable, and where, and by whom. Set forth in full, and particularly the words and figures of one bond of each class so received by you or either of you.

2. What disposition have you made of the bonds or stock delivered
to you, and designated by numbers in this bill, under said contract,
50 copy of which is hereto attached, marked Exhibit A? State par-
ticularly the disposition made of each bond and coupon. To whom was each particular bond delivered; and if sold, to whom, and

when, and for what consideration? State particularly the terms of sale, and what consideration was agreed upon to be paid therefor, and how much thereof has been paid. And state what interest you now have in said bonds, or any of them, and what part of the proceeds of said bonds, or any of them, or the coupons attached thereto, is to be paid to you?

3. State particularly as to each bond and coupon designated by numbers in this bill, and so delivered to you under said contract hereto attached, marked A, where the same now is, and in whose possession, and for what purposes, and upon what trust the same is held.

4. State what was the market price of gold in New York, at the particular date at which you sold said bonds, designated by numbers
51 in this bill, or any of them. Give the particular date of each
sale, the number of the bonds sold, the place where sold, the party to whom sold, the consideration for such sale, and the amount of premium at which gold was selling in the New York market at the date of each sale of any of such bond or bonds by you?

That each of said defendants, except the said White and Chiles, may severally and respectively answer interrogatories numbered 6, 7, and 8.

6. State whether or not you hold, or have held, since January 12, 1865, any United States Texan indemnity bonds. Whether you have, or since said date have had, any of said bonds in your possession, or under your control; and if so, when, where, and from whom you obtained the same. State particularly the number of each of said bonds so held by you, or under your control, or in which you have any interest;
when, where, and from whom you obtained each of said bonds;
52 what consideration you agreed to pay for each and all of said
bonds, and how much of such consideration has been paid, and whether any person other than yourself is interested in such bond or bonds, or any of them, or the proceeds thereof, and if any such person, what person, in what particular bond, or the proceeds of what particular bond, is such person so interested; and if you held any of said bonds since said 12th day of January, 1865, and do not now hold the same, when, and how you disposed of them, and in what the proceeds thereof have been invested?

7. If you hold any United States Texan indemnity bonds, state whether or not you obtained the same or any portion thereof from Geo. W. White and John Chiles, or either of them, and state particularly all the circumstances under which said bonds came into your possession, or under your control; whether the same were purchased by you or
pledged with you as security for money advanced; and if as
53 security for money advanced, for what sum, to whom the same
was advanced, upon what terms, and for what purpose, the same was to be used; and if the same were purchased, state when, upon what consideration, and what portion of such consideration is paid, and what yet due. And if any of said bonds are in your possession or under your control, and were not obtained from said White and Chiles, or either of them, state from whom you obtained your interest in and to the same, and whether or not at the time you obtained such interest you knew or had information or notice, or had reason to believe that such bonds had been in the possession of said White and Chiles, or either of them, and whether you knew or had information or notice of the circumstances and manner in which the same came into the possession of the said White & Chiles, or reason to believe that they had obtained the same
from the acting government of the State of Texas, during the late
54 civil war, and whilst the said acting government of the State of
Texas was engaged in war against the United States. And state

particularly what was the amount of premium in gold in the New York market at the dates upon which you obtained an interest in each of said bonds severally and respectively.

8. And also state against what and whose claim you agreed to provide, and did provide, indemnity or security to said Hugh McCulloch at or before the said indemnity bonds were redeemed, and especially what notice you or your agents had that said indemnity bonds were claimed by or in behalf of the State of Texas, at or before the time when the same were redeemed. And state what was the arrangement about interest and what interest has been paid.

And the State of Texas prays that the United States writ of injunc-
tion may be issued by this honorable court, directed to the
55 said defendants and their agents, especially enjoining and restrain-
ing them and their agents, and all others, their agents, aiders,
and abettors, from asking for, demanding, or receiving from the United
States, or any officer thereof, the amount due on said bonds or any part
thereof, as well as the amount due on the coupons thereto attached or
any part thereof, or any other securities into which the said bonds and
coupons may have been converted, and that the said bonds and each of
them with the coupons thereto attached, and the securities, in which the
amount due on said bonds may have been invested, may be delivered to
the said State of Texas, or its authorized agent, if the same are yet in
the control of the defendants and their agents; and if not in their pos-
session and control, that your orator may be paid for the value of its
indemnity bonds so redeemed out of said amount in 5-20 bonds of the
United States so in the hands of the defendant R. W. Tayler; and
56 that the said Tayler may be decreed to pay the same over to your
orator, or its authorized agent, with all the increase thereof, in
satisfaction of the claim of your orator by reason of said indemnity
bonds, numbered as aforesaid; and for such other and further relief in
the premises as may to your honors seem just and proper. May it please
this honorable court to grant unto complainant a writ of subpœna,
directed to George W. White, John Chiles, The First National Bank of
Washington City, Hugh McCulloch, and Robert W. Tayler, and William
S. Huntington therein, requiring them, and each of them, at a certain
day, to appear before this honorable court, and answer this bill, and to
abide and perform such decree therein as to this honorable court shall
seem meet.

GEO. W. PASCHAL,
R. J. BRENT,
RICHARD T. MERRICK,
Solicitors for Complainants.

57 George W Paschal, being sworn, says that he is the duly au-
thorized attorney of the State of Texas, empowered to institute
proceedings on its behalf, for the recovery of the bonds mentioned and
referred to in the foregoing bill, and the proceeds thereof; that he has
read the same, and the statements, allegations, and charges, so far as
made upon the information, knowledge, or belief of affiant, are true;
and so far as stated upon the knowledge, information, or belief of any
other, he believes them to be true.

GEO. W. PASCHAL.

Subscribed and sworn to before me this 28th day of April, 1869.

R. J. MEIGS, *Clerk.*

The defendants are required to answer within ten days hereafter—28th April, 1869.

GEO. W. PASCHAL,
Sol. for Compl't.

58 *Exhibit "A" to amended bill.*

(For the above exhibit see "Exhibit A" at the end of the original bill on page .)

Marshal's return on amended bill.

"Served copy of the within amended bill on W. S. Huntington, Hugh McCulloch, and R. W. Taylour, this 30th April, 1869.

"A. SHARP, *Marshal.*"

Summons to answer amended bill.—Issued April 28, 1869.

In the supreme court of the District of Columbia, April 28th, 1869.

STATE OF TEXAS, BY ATT'Y GEO. W. PASCHAL,
compl't,
against
GEO. W. WHITE ET AL., DEFENDANTS.
No. 1280. Equity doc. 9.

59 The President of the United States to George W. White, John Chiles, William S. Huntington, The First National Bank, Hugh McCulloch, and Robert W. Tayleur, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the amended bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Summoned W. S. Huntington, Hugh McCulloch, R. W. Taylour. Not to be found—the others.

"A. SHARP, *Marshal.*

"April 30th, 1869."

"Summoned John Chiles, May 17, 1869."

60 *Answer of def't Hugh McCulloch.—Filed May* 22, 1869.

In the supreme court of the District of Columbia.

THE STATE OF TEXAS
vs.
GEORGE W. WHITE ET AL.
1280. Equity.

The separate answer of Hugh McCulloch, one of the defendants, to the bill of complaint of the complainant.

This respondent, for answer to the said bill or for answer to so much thereof as he is advised it is necessary or material for him to answer unto, answering, says:

That in the several matters and things in the said bill contained wherewith he is in any manner connected, by direct charge or insinuation, he acted according to his judgment, as Secretary of the Treasury, and not otherwise; and he denies that he wrongfully or illegally 61 agreed to redeem any of the bonds in question or to do any other act; on the contrary he affirms that whatsoever he did in relation to the bonds, presented by the First National Bank of Washington and redeemed upon the trust in the hands of Robert W. Tayler, was intended as it was adapted to protect the rights of the said complainant as of others interested, as they should be finally determined by judicial order or decree.

And this respondent says he has no personal interest in the matter in controversy between the complainant and the defendants, and ought not to be involved therein.

And this respondent submits that, inasmuch as the said complainant has elected in her said bill of complaint, to pursue and accept the trust fund, in its present form, in the hands of said Robert W. Tayler, trustee, as in the said bill set forth, she has not made and in her said bill 62 does not make a case entitling her to any discovery from or any relief against this respondent; and having fully answered all that it is necessary or material for him to answer unto, he prays to be hence dismissed with his costs.

HUGH McCULLOCH.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Hugh McCulloch being duly sworn, according to law, on his oath says that all the matters and things stated in the foregoing answer, by him subscribed as of the information of others are true, as he believes, and that all the other matters and things therein contained and set forth are true in substance and fact.

HUGH McCULLOCH.

Sworn to and subscribed before me this 7th day of May, A. D. 1869.

CHA'S P. WANNALL, *J. P.*

63 *Answer of def't Robert W. Tayler.—Filed May* 22, 1869.

In the supreme court of the District of Columbia.

THE STATE OF TEXAS
vs
GEORGE W. WHITE ET AL.
} 1280. Equity dock. 9.

The separate answer of Robert W. Tayler, one of the defendants, to the bill of complaint of the complainant.

This respondent, for answer to the said bill, or to so much thereof as he is advised it is necessary or material for him to answer unto, says:

That, prior to the 27th day of February, 1867, the First National Bank of Washington had deposited in the Treasury Department, for redemption, nineteen bonds, of one thousand dollars each, commonly denominated Texan indemnity bonds, numbered, respectively, 4226, 64 4227, 4228, 4703, 4705, 4706, 4748, 4813, 4825, 4843, 4844, 4912, 4927, 4928, 4929, 4960, 4961, 4962, and 4963, and eighty-three interest coupons from the same or other like bonds, amounting to two thousand and seventy-five dollars, and aggregating, with the bonds, the sum of twenty-one thousand and seventy-five dollars, ($21,075.) A claim had also been preferred to these and other similar bonds on behalf of the State of Texas; proceedings had been commenced in the Supreme Court of the United States, as this respondent has been informed and believes, to enforce such claim in respect to said other bonds, and a personal action had been commenced against Hugh McCulloch, then Secretary of the Treasury, to recover for the detention of sundry bonds, including nine or ten of those herein specified, as this respondent was informed and believes.

Respondent further says that, on or about the 27th day of February, 1867, on the application of said bank, the Secretary of the
65 Treasury directed the payment of the bonds and coupons hereinbefore described; but, in view of the legal proceedings aforesaid and other like proceedings, in which he did not desire to be involved, that might be instituted, the Secretary required that said bank should deposit in the hands of this respondent 7-30 notes of the United States, so called, equivalent in value to the said Texan indemnity-bonds and coupons, the same to be held in trust by this respondent to await the result of the litigation, and to this the said bank assented. Respondent, to be exact, ought to say that the proposition came from the bank for the purpose of having the fund placed in a condition to increase by interest. In accordance with the aforesaid requirement, the bank placed in the hands of this respondent 7-30 notes of the nominal value of thirty thousand dollars, and the said sum of twenty-one thousand and seventy-five dollars was paid in gold coin. This respondent believes
66 that the 7-30 notes so placed in his hands exceeded in value the coin received by the bank; but if this were so, he is not now able to explain it.

This respondent states that, during the month of September, 1867, with the approbation of the bank, he caused the said 7-30 notes to be converted into 5-20 bonds of the United States of 1867, under the act of March 3, 1865. These 5-20 bonds are numbered 577, 578, 579, and are of ten thousand dollars each, making a total of thirty thousand dollars; the bonds are payable to this respondent as trustee, and bore interest at 6 per cent. from July 1, 1867.

At the time of the conversion this respondent collected the sum of eight hundred and sixteen ($816) dollars, lawful money, on account of interest on said 7-30 notes; he also collected, in coin, the semi-annual interest on the 5-20 bonds due January and July, 1868, and Jan-
67 uary, 1869, being nine hundred dollars at each period, which he converted into lawful money by sale, and he deposited the same. For interest collected as aforesaid he holds the following certificates of deposit, payable to him as trustee, namely:

No. 4345 of the First National Bank of Washington, dated October 19, 1867	$816 00
No. 448, same bank, dated Jan'y 6, 1868	1,200 00
No. 8392 of Jay Cook & Co., dated June (ought to be July) 17, 1868	1,278 00
No. 8873, same bankers, dated Jan. 6, 1869	1,215 00
Total lawful-money interest	$4,509 00

This respondent further states that in the transactions herein mentioned and referred to, the said bank, so far as is known to him, was represented chiefly or wholly by William S. Huntington, esq'r., the cashier, but some other officer of the bank may, at times, have acted for it.

68 And this respondent further answers that he has no personal interest in the matters in controversy; that he has acted and now holds the said 5-20 bonds and certificates of deposit as trustee only, and he is ready and willing to assign and transfer the same as this honorable court may direct.

And, having fully answered all that he is advised it is necessary or material for him to answer unto, he prays personal protection against the costs and expenses of a litigation in which he has no interest.

ROBERT W. TAYLER.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Robert W. Tayler, being duly sworn according to law, on his oath says that all the matters and things stated in the foregoing answer by him subscribed, as of the information of others, are true, as he believes, and that all the other matters and things therein contained and set forth are true in substance and fact.

ROBERT W. TAYLER.

69 Sworn to and subscribed before me this 22d of May, A. D 1869.

CHA'S P. WANNALL, *J. P.*

Answer of def'ts W'm S. Huntington & 1st Nat'l Bank.—Filed June 9, 1869.

In the supreme court of the District of Columbia.

THE STATE OF TEXAS
vs.
GEORGE W. WHITE, JOHN CHILES, ET AL. } No. 1280. Equity docket 9.

The defendants, the First National Bank and William S. Huntington, saving and reserving to themselves every just and legal exception to the many errors and insufficiencies to the complainant's bill, for answer thereto, or so much thereof as they are advised that it is material for them to answer, say:

70 First. That the complainant has no such status as one of the United States, nor had she at the time of the commencement of this suit, as to authorize her to bring and prosecute the same.

Second. That, before the filing of the complainant's original or amended bill herein, to wit, on the second day of March, 1867, the Congress of the United States of America passed an act which was approved by the proper authority, and became and now is the law, by which it is enacted and declared that the said State of Texas did not possess any legal State government, but that the same was merely provisional, and the defendants therefore deny the complainant's right to sue.

71 Third. That, subsequently to the passage of the said act of March, 1867, the said Congress of the United States passed several amendatory acts declaring that the said State of Texas had no legal civil government, and placed all of her civil and political

affairs under the authority and jurisdiction of a military commander, who is, in fact and in law, the executive authority of said State, and who never did authorize the bringing and prosecution of this suit.

Fourth. The defendants deny that this suit was brought or is carried on by the authority or consent of the people of the said State of Texas, or that the same is carried on for the benefit of the people thereof.

Fifth. These defendants admit that the said State of Texas was once the owner of a large number of bonds, with coupons attached, and they believe that the same, together with the manner of acquiring them, are correctly set out and described on complainant's bill.

72 Sixth. They further say that, so far as they know, they believe said bonds, with the coupons, are accurately described in complainant's bill.

Seventh. The defendants know nothing of the transaction alleged to have occurred between the military board of the said State of Texas and their co-defendants White and Chiles, farther than what appears from the alleged written contract, which is filed and made an exhibit in complainant's bill, and by which it appears that certain of said Texan indemnity bonds were sold and delivered to said White & Chiles.

Seventh. (?) These defendants deny that they have any knowledge that any of the bonds that came to their possession were seized by an unlawful combination of persons, and sold to their co-defendants White & Chiles, for the purpose of aiding in the late rebellion, and to overthrow the authority and Government of the United States; and
73 they deny the fact to be as charged in the complainant's bill.

Eig'th. These defendants are advised, and, therefore, charge that if any of the bonds which came to their possession came through the hands of White & Chiles, or either of them, they were sold and delivered to them by the authority of the people of the said State of Texas through their de facto government, and, being negotiable paper, passed by delivery, and, having been redeemed at the Treasury of the United States, cannot now be recovered by the complainant, neither can the proceeds thereof.

Ninth. They deny that said contract with said White & Chiles, (if any such were, in fact, made,) was for the purpose of aiding in the rebellion, and to overthrow the Gov't of the United States.

74 Tenth. The defendants further deny that they have, hold, or claim any of the bonds (that is the Texan indemnity bonds) set out and described in complainant's bill. They admit that certain bonds of that description came to their possession, some by purchase, and some for collection.

Eleventh. They herewith file a list or schedule of all the bonds of the description which came to their possession, and make same part of this answer, marked Exhibit (A.) From which schedule will be seen the numbers of said bonds, the persons from whom obtained, to whom paid, and when, and also the amounts. Those opposite to which are the letters N. B., are those which these defendants bought. The others are those which they held for collection.

These defendants deny that they ever bought or had placed in their hands any bonds for collection as the agents of said White &
75 Chiles, or either of them, or that any of said bonds were purchased from said White & Chiles, or either of them, by these defendants, or either of them.

Thirteenth. These defendants expressly deny that they had any notice or knowledge, at the time they purchased bonds, that any of them had come through the hands of White & Chiles, or any of the circumstances under which White & Chiles obtained said bonds if, indeed, they evere held any of them.

Fourteenth. It is true they had learned through the newspapers and from other sources that there were certain bonds which had come through White & Chiles' hands, about which there would probably be some controversy, and, before the defendants bought the bonds in controversy in this suit, they made diligent inquiry in the Treasury Department to ascertain, if possible, whether or not any of said bonds belonged to the class known as the White & Chiles bonds.

76 Fifteenth. None of the officers in said Treasury Department could give these defendants the required information, or identify any of said bonds as belonging to the White & Chiles class. The defendants further say that they bought said bonds, actually believing that they were not of the class of White & Chiles bonds. They purchased said bonds in the best of faith, for a full consideration, to wit: ninety-eight cents to the dollar in gold, except those specified in Exhibit A, which were bought at $92 in gold.

Sixteenth. They state further that they knew that the Secretary of the Treasury had from time to time redeemed a large amount of similar bonds. They herewith file a list of those which had from time to time been redeemed at the said Treasury. They make said schedule part of the answer, marked Exhibit B. They say that said list, marked Exhibit B, is furnished from the records of the said Treasury Department.

77 Seventeenth. These defendants deny that when they presented said bonds to the then Secretary of the Treasury, Hugh McCulloch, that they knew any suit was being prosecuted in the Supreme Court of the United States for any of these bonds, for, as before stated in this answer, the said Secretary being himself unable to identify any of them as the White & Chiles bonds, these defendants took for granted and did verily believe that none of them were such.

Eighteenth. These defendants admit that they made a deposit with the Secretary of the Treasury of certain seven-thirty bonds, but deny that it was done for the purpose set forth in complainant's bill. They state that the said Secretary manifesting some reluctance about redeeming the Texan indemnity bonds, these defendants placed on deposit said
seven-thirty bonds to induce him to do what these defendants
78 then thought and still think was his plain duty, to wit, to redeem
said Texan indemnity bonds. And the said Secretary did then and there redeem them absolutely and unconditionally, and said seven-thirty bonds were intended alone as personal indemnity to the said Secretary, and for no other or different purpose whatever.

Nineteenth. They deny that said seven-thirty bonds were to be held in trust by Rob't W. Tayler, First Comptroller, to answer in the room and stead of the said Texan indemnity bonds for any liability that these defendants might be subjected to on account thereof. They state further that no part of the proceeds of said Texan indemnity bonds were invested in the purchase of either the seven-thirty or five-twenty bonds.

Twentieth. These defendants therefore deny the right of the complainant to interfere in any respect with the seven-thirty or five-
79 twenty bonds. The First National Bank is amply able to pay any
liability which it may be adjudged to have incurred in the premises.

Twenty-first. The defendants deny that the said Texas indemnity bonds were merely nominally redeemed, or that the said seven-thirty or five-twenty bonds were substituted for said indemnity bonds, or in their stead, and these defendants repeat that said Texan indemnity bonds were bought in good faith, redeemed in good faith, and with no conditions about it.

Twenty-second. The defendants say they know nothing of the pecuniary condition of their co-defendents White & Chiles, and know not whether they be solvent or insolvent.

Twenty-third. These defendants, further answering, state that sometime after the complainant commenced the suit in the Supreme Court of the United States, to wit, on the day of ,
80 the said complainant and the defendants White & Childs made
a compromise and settlement of all matters pertaining to all the bonds which had come to the hands of said White & Chiles; said compromise was reduced to writing and duly executed, said White signing the same for himself and Chiles; said contract is in the possession of said complainant, and, as they believe, now in the hands of George W. Paschal, who claims to be the agent for the complainant, and is also one of her attorneys as appears from the record. These defendants state that they have no means of access to said contract until this honorable court shall order its production in court; and not having seen said contract these defendants state its contents from information.

These defendants charge that by the terms of said contract of compromise, the complainants agreed to release all claim upon all the bonds which have passed through the hands of said White &
81 Chiles, except those which were enumerated and excepted by the
terms of said contract; and these defendants aver that the bonds in controversy, were not of the number excepted, and are therefore released from any claim on the part of said complainant.

They further state that by the terms of said contract, the said White and Chiles were released from all liability on account of the contract by which they obtained any bonds from said military board; that no person was to be sued or pursued who has obtained any of said bonds and paid value for them, except those expressly excepted by the terms of the said compromise, of which the bonds in controversy were not among the excepted.

That by the terms of said compromise said White & Chiles and their securities were released from all liability on their original contract with the said military board.

Twenty-fourth. These defendants, further answering, say in answer to interrogatory No. six, (6,) propounded by complainant:
82 That on the statement or schedule, made on Exhibit (A,) re-
ferred to in the preceeding part of this answer, will be found substantially an answer to said interrogatory No. 6. They have also in a preceding part of this answer stated that they paid ninety-eight cents on the dollar in gold for said bonds; they have paid all the consideration for said bonds, and no person, except this defendant, is interested in the proceeds thereof. The defendants hold none of said bonds now, all having been redeemed, and the proceeds paid into the said First National Bank, and not interested in any bonds.

Twenty-fifth. In answer to interrogatory No. 7, the defendants say, they do not now held any Texas indemnity bonds; never obtained any from White & Childs, or either of them; knew nothing of White & Chiles, and they bought said bonds in the manner heretofore
83 stated in this answer. These defendants have stated, in sched-
ule A, from whom they obtained said bonds; they refer to said schedule, and make it a part of this answer; they say they have no

knowledge or notice that White & Chiles have ever seen any of said bonds, or how, when, or where, or from whom, or what government, they obtained said bonds if any of them they ever in fact had. The amount of premium on gold, at the time the defendants bought said bonds, was as set forth in said schedule A.

Twenty-sixth. The answer to interrogatory No. 8. The defendants say they did not provide, nor agree to provide indemnity against any claim or claims, or liability, except as stated heretofore in this answer, as personal indemnity to the then Secretary, Hugh McCulloch. They had no notice that the State of Texas claimed any of the bonds they bought. No arrangement was made about interest, and none has been
paid. These defendants do not know, and cannot admit that any
84 of the indemnity bonds sued for are those purchased by White &
Chiles, from the State of Texas through the military board.

These defendants deny each and every allegation in complainant's said bill not admitted by this answer, and having fully answered, pray to be hence dismissed with their costs.

CALEB CUSHING,
CHANDLER & TURK,
MOORE & BRIGHT,
Sols. for Def'ts.

W. S. HUNTINGTON.

WASHINGTON CITY, D. C., *June 3d*, 1869.

This day personally appeared before the undersigned, a notary public in and for said city, William S. Huntington, for himself and the
First National Bank, and being first duly sworn states that the
85 facts set forth in the foregoing answer, so far as related from his
own knowledge are true, and so far as related on information derived from other personal sources, he believes to be true.

N. CALLAN,
Notary Public.

Exhibit A to answer.—Filed Jun. 10, 1869.

				Am't paid.	Numbers.	Price of gold.
* Sept. 9, 1865 ..	P.F. Stanton b'ds....	$9,000				
" ..	" coupons.	1,000	10,000	....	4281-89	
Oct. 9, " ..	S. Wolf b'ds..........	14,000				
	" c'p'ns........	1,050	15,050	14,500 gold	4883-95 & 4913, N. B.	146
	F. P. Stanton b'ds.	14,000				
	" c'p'ns..	1,050	15,050	92 per c't gold	4896, 4899-4911, N.B.	146
Aug. 18, 1866 ..	Jay Cooke & Co. b'ds.	6,000				
	" c'p'ns	600	6,600	98 per c't gold	4703, '5, '6, & '8, 4813, '25	150
Sept. 12, " ..	do. b'ds.	1,000				
	" c'p'ns	75	1,075	98 per c't gold	4912 .... N. B.	146
" 27, " ..	do. b'ds.	2.000				
	" c'p'ns	125	2,125	98 per c't gold	4843, '4 .... N. B.	145
Dec. 3, 1865....	do. W'n b'ds.	7,000				
	" " c'p'ns.	550	7,550	98 per c't gold	4927, '8, '9, 4960-'3 N.B.	145
Jan'y 2, 1866 ..	S. Wolf b'ds	3,000				
	c'p'ns.	725	3,725	98 per c't gold	4226, '7, '9....... N. B.	144¼
			61,175			

* Collected ¼ com.

86 *Exhibit B to answer.—Filed June 10, 1869.*

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *May* 27, 1869.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true list of Texas indemnity bonds, paid since January 1, 1865, as appears from the books in this office.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above-written.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

87 *Texas indemnity bonds.*

Date.	To whom paid.	Amount.
January, 1865.	Metropolitan Bank, New York	8, 000
	D. Russell, cashier	5, 00
	Lee, Higginson & Co	10
	Henry L. Daggett & Co	1
	F. G. Ballard	10
	Samuel Burhl	15
	Arkaid T. Holden	2
	Lee, Higginson & Co	6
	C. R. Huntington	1
	S. S. Blanchard, cash'r	5
	C. H. Hamilton, treas	3
	Harriet J. Rogers	1
	E. Obermeyer & Bro	5
	Bank of the Manhattan Co., N. Y.	4
	L. P. Morton & Co	16
	Railroad Bank, Lowell, Mass	13
	Fred. Victor & Acheline	10
	Lewis Dun	5
	A. C. Kingsland	10
	J. Pierpont, Morgan & Co	25
	Lockwood & Co.	63
	Brown, Bros. & Co	23
	Fisk & Hatch	12
	Amount forward	253, 000

88 Date	To whom paid.	Amount.
January, 1865.	Amount forward	253, 000
	James Luix	20
	Benj. C. White	2
	Bunge, Burlage & Co.	30
	W'm Ryle, jr.	10
	Elijah F. Purdy, pres.	2
	Schuhardt & Gebhard	22
	Howes & Macey	5
	James F. De Peyster, treas	190

	Marine Bank, N. Y	10
	Whitehouse, Morrison & Co	49
	Mech's' & Traders' Bank, N. Y	5
	James G. Kings' sons	6
	Abner Kingman	1
	W'm G. Billings	10
	H. K. Frothingham, cashier	6
	Jno. Rogers	3
	Reuben Hunt	3
	State Bank of Hartford, C't	1
	Burrall, Adams & Co	2
	Lee, Higginson & Co	4
	Geo. J. Seney, cash'r	20
	Marcuse & Baltzer	1
	Gurdon Bill	1
	Amount forward	656, 000

89 Date.	To whom paid.	Amount.
January, 1865.	Amount forward	656, 000
	W'm A. Hall, cash'r	14
	Jno. & Ja's S. Connor	5
	Abby C. Provost	1
	Edwin Whiting	2
	Grant & Son	1
	T. Jefferson Coolidge, treas	11
	Alfred E. Gibbs	1
	Austin D. Kilham	1
	Ruprecht & Forstner	2
	R. M. Pratt	5
	Howes & Macey	10
	Brewster, Sweet & Co	5
	E. Platt, cash'r	99
	Whitehouse, Morrison & Co	1
	B. F. Romaine	15
	Importers & Traders' Bank, N. Y	3
	H. B. Cromwell	5
	Ward, Campbell & Co	41
	Brewster, Sweet & Co	1
	Bridgeport Savings' Bank, Conn	5
	Lockwood & Co	40
	Isaac Bell	3
	Bank of Manhattan, N. Y	9
	Amount forward	936, 000

90 Date.	To whom paid.	Amount.
January, 1865.	Amount forward	936, 000
	W. H. Martin & Co	6
	Fisk & Hatch	14
	" "	4
	Chemical Bank, N. Y	1

Clark, Dodge & Co.	10
M. Morgan & Sons	9
Phœnix Bank, N. Y.	5
Bank of Rutland, V't	4
Livermore, Clews & Co	5
Mass. Hospital Life Ins. Co	9
W. C. Schemerhorn	5
Charles H. Dalton	7
Marine Bank, N. Y.	1
Nat'l Hide & Leather B'k, Boston, Mass	1
J. W. Vose	4
Lockwood & Co.	50
Bridgeport Savings' Bank, Conn	5
Bank of the Republic, N. Y	9
Bank of Fishkill, N. Y.	3
W'm & Jno. O'Brien	3
A. B. McDonald, ag't	9
Fairhaven Inst. for Savings', C't	1
August Rutter	40
Amount forward	1,141,000

91

Date.	To whom paid.	Amount.
	Amount forward	1,141,000
January, 1865.	Benson Van Vliet	1
	William Schall & Co	10
	W'm & Jno. O'Brien	1
	Fisk & Hatch	1
	Marcuse & Baltzer	8
	Samuel Kendall	3
	Bank of New York	1
	B. A. Gould	1
	Bridgeport Savings Bank, Conn	5
	Second National Bank, N. Y	1
	Culver, Penn & Co	2
	Metropolitan Bank, N. Y	1
	Nat'l Bank of the Metropolis, Wash'n, D. C.	5
	A. A. Schemerhorn	5
	Henry A. Stone & Son	5
	Nat'l Bank of the Metropolis, Wash'n, D. C.	4
	Park Bank, N. Y	1
	Coddington Billings	1
	Park Bank, N. Y	3
	Adams Express Co	2
	Maj. Gen. J. G. Barnard	2
	Bowery Savings Bank, N. Y	1
	Cameron & Co., N. Y	8
	Amount forward	1,213,000

92 Date.	To whom paid.	Amount.
	Amount forward	1,213,000
January, 1865.	Duncan, Sherman & Co	8
	Nat'l Park Bank, N. Y	1
August 2.	Riggs & Co	2
Sept. 5.	L. R. Marshall	1
" "	C. P. Leverich	41
" 7.	Richard Schell	12
" 12.	W. S. Huntington	9
" 18.	S. M. Severson	25
" 22.	M. Morgan & Sons, N. Y	1
" "	N. Francis, Boston, Mass	2
" "	C. G. Havens, N. Y	1
Dec'r 15.	Birch, Murray & Co	4
Ja'y 20, 1866.	G. C. Lord, ex'r	9
19.	Merchants' Nat'l Bank, Wash'n, D. C	1
Dec'r 1, 1865.	A. H. Latimer & J. H. Bell, sec'y	10
Ja'y 13, 1866.	N. Francis, esq., Boston, Mass	1
" 18.	Horace Gray	1
"	Fisk & Hatch	1
16.	Hugh McCulloch, Sec'y of the Tre'y	1
20.	Gayso Savings Inst. & others	25
25.	Wiley B. Griffin, Augusta, Ga	14
	W. S. Huntington, cash	14
	" " " "	14
	Amount forward	1,411,000

93 Date.	To whom paid.	Amount.
Feb'y 9, 1866.	Amount forward	1,411,000
"	Isaac Scott	5
"	Theodore Victor & Duckwitz	4
"	Thomas E. Lloyd	1
May 1, 1866.	Wordlinger Bro's	5
" "	Alexander N. Wilson	1
"	Philip Gover & Co	1
"	Gilman, Son & Co	4
"	Satterlee & Co	1
"	Rob't H. Taylor	40
"	W. Schall & Co	1
Nov. 1, "	Dabney, Morgan & Co	149
"	R. & D. G. Mills, Galveston, Texas	25
Jan'y 4, 1867.	James S. Higbee, Newark, N. J	1
"	Nat'l Bank of the Commonwealth, N. Y	9
"	Jno. J. Cisco	5
"	Albon Man, att'y for Rob't C. Groyer	2
"	Richard D. Wood, Phila., Pa	3
"	Eliot F. Shepard, N. Y	1
	Frazer, Major & Co., N. Y	2
March 1, 1867.	Edw'd Lambert, N. Y	3
"	W. S. Huntington	18
"	Jno. A. Hardenburg	34
" 29, '67.	Sawyer, Wallace & Co	1
	Amount forward	1,727,000

94 Date.	To whom paid.	Amount.
	Amount forward	1,727,000
March 29, '67.	W. S. Huntington	1
"	J. H. Stair	27
"	Albon Man, ag't for M. Echevenia	20
Jun. 28, '67.	James W. Dana	4
Ja'y 4, 1868.	Chipman, Hosmer & Co	1
"	S. S. Cox, att'y, N. Y	1
"	Riggs & Co	2
"	Simon Levi	1
Feb'y 3, 1868.	Chipman, Hosmer & Co	1
" "	Lewis Johnson & Co	1
9.	W. S. Pierson, att'y	4
	Total	$1,790,000

Replication.—Filed July 8, 1869.

In the supreme court of the District of Columbia.

State of Texas
vs.
White, Chiles et al. } 1280. Equity dock. 8.

95 The replication of the State of Texas, complainant, to the several answers of William S. Huntington, Robert W. Tayler, Hugh McCulloch, and The First National Bank of Washington, defendants, to the said complainant's original and amended bills of complaint.

This replicant, saving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers for and by way of replication, saith that his said original and amended bill of complaint, exhibited into this court against the said defendants, and all and every matter, &c., therein contained, are true, certain, and sufficient in law to be answered unto by the said defendants, and that the answers of the said defendants are untrue, uncertain, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answers contained, 96,97 material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, this replicant is and will be ready to aver and prove as this honorable court shall direct. And humbly prays as in and by his said bill he has already prayed.

BRENT & MERRICK &
GEO. W. PASCHAL,
Attorneys for Pl'ff.

98 COMPLAINANT'S TESTIMONY.

Deposition of R. W. Tayler, for complainant, taken before J. O. Clephane, examiner in chancery.

And the said R. W. Tayler, being of proper age, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause, was carefully examined by me, and did thereupon depose, testify, and say as follows:

Examined by Geo. W. Paschal, solicitor for compl't:

1. Q. Mr. Tayler, this is a suit in behalf of the State of Texas, for the recovery of the proceeds of certain bonds charged to have belonged to Texas, under the law of 9th September 1850, and to have been placed by the military board of Texas in the hands of White & Chiles, and
afterwards to have passed into the hands of the First National
99 Bank, and to have been bought by that bank. You will please
state first, what you know in regard to those bonds, their issuance and their description.

A. I know nothing about the issuance of the bonds except what is of public record.

2. Q. Have you any means of knowing by the records of this office the number of the last bond endorsed by Governor Sam. Houston?

A. From the records of the Department, and from information derived from officers of the treasury of the State of Texas, I judge that the last one was numbered 4218. The preceding numbers had been endorsed by some one of the governors.

3. Q. State which of those unendorsed bonds were presented by the officers of the First National Bank, for redemption here.

A. The account shows from No. 4281 to 4289, were paid to Mr. Huntington, cashier of the First National Bank, September 3d, 1865—paid to Mr. Huntington for Mr. F. P. Stanton, who presented them. The
papers on file connected with the payment show that the bonds
100 belonged to Soloman Haas. I do not know whether the draft was
issued in favor of Mr. Stanton, or Mr. Huntington; but my recollection is the payment was made to Mr. Huntington, either as the payee or endorsee. Twenty-seven coupons of $25 00 each, were paid, and there were thirteen detached coupons, which made forty in all.

4. Q. I see that a number of affidavits were filed by different parties, and letters written, I suppose, for the purpose of trying to show good faith in the purchase. I would ask what, at that time, was the requirement of the Department here, in order to enable a party to obtain payment at all?

A. The requirement was to show loyalty and good faith.

5. Q. Was it necessary to show good faith in the possession; and, if so, why?

A. Nothing more than loyalty and good faith in the holders.

6. Q. What do you mean by good faith?

101 A. Well, if they had purchased them for a valuable consideration.

7. Q. I see it stated that these bonds came through the hands of John P. White. Do your investigations enable you to say they were part of the bonds received by White & Chiles?

A. I do not know anything more about that than what is to be gathered from the general appearance of the transaction. There was nothing at that time known here about the White & Chiles purchase; at least I had heard nothing of it.

8. Q. But from this general appearance of which you speak, what is your opinion as to their having been part of the same bonds?

A. From all the circumstances, my opinion is, those were of the White & Chiles' bonds. That is only an opinion, however.

9. Q. This letter, (referring to letter of F. P. Stanton, dated Sept. 9th, 1865, made a part hereof, and marked Ex. "A,") will probably refresh

your memory as to whom they were paid. State the relation that party, (,) bore to the bank.

102 A. I said I thought the money was paid to Mr. Huntington.
From certain circumstances I know the money was paid to him, but know nothing personally as to what form the payment took.

10. Q. Mr. Huntington was managing for the bank?

A. He was cashier of the bank, but I should say here that my impression was that the bank had no interest in these bonds.

(At the request of solicitor for complainant, witness produces his answer filed in this case of State of Texas vs. White et al., No 1280, equity; also, report made part of answer of the bank, and other papers on file in office of 1st Comptroller, all of which are made a part hereof, and marked Ex. "B.")

11. Q. I see your report in this file which you have furnished, and which is to be made part of your deposition, bears date 9th Sept., 1865.
Will you please state how soon after that time the possession of
103 White & Chiles, and the way the papers by which they came
into possession became known to your office; in other words, how soon was the protest of Texas entered against further payment?

A. I am not able to state the date at which the fact was known in relation to the White & Chiles contract, but it was between Sept. 9th and the 1st of October, 1865.

12. Q. I see in your previous deposition you have certified my letter of the 5th of October, but was not the fact known here nearly a month sooner? I will ask you if you do not remember my arrival in this city on the very day that this payment was made to Huntington, or the Monday following?

Ans. I say it was between the 9th of September, 1865, and the 1st of October, 1865. I am not able to give the particular dates. I say that because I think there were no other payments made during that month to anybody.

13. Q. State how soon after this 1st of October, 1865, you know
104 that Mr. Huntington received notice of this difficulty in relation
to the White & Chiles bonds, or of the refusal of the Government to pay them.

A. On the 6th of October, 1865, Mr. Huntington sent to the Department, for redemption, fourteen bonds.

(Letter of Mr. Huntington transmitting such bonds, made part hereof, and marked "C," J. O. C.)

The numbers of those bonds were from No. 4883 to No. 4895, inclusive, and No. 4913. There were some coupons, but I am not able, from the papers before me, to give the number. Mr. Huntington states interest from July, 1863, in this letter.

14. Q. These bonds and coupons were paid about January 18, 1866?

A. I cannot give the exact date. I will state that at the time, or about the time Mr. Huntington presented these bonds, I knew of the
claim made by Texas to the White & Chiles bonds. I had a copy
105 of that contract, and stated the fact to Mr. Huntington. He said
to me, though I do not find it in his affidavit, that he had purchased them on the faith of the payment made of those held by Mr. Stanton, in September, and for that reason I considered his as being held in good faith, and recommended their payment by the Secretary, on the 18th of January, 1866.

15. Q. State whether or not, in the course of the controversy as to whether or not these bonds you now speak of should be paid, Mr. Hunt-

ington was advised of the character of the transaction of White & Chiles; whether you advised him of it.

A. In a general way, I did. I cannot give the details of the conversation. We talked the matter over, however, and he knew of it. He said that he did not know it at the time he purchased, and that he had purchased and had paid for them because the Department had paid Stanton.

106 16. Q. Do you remember about how soon the fact that Texas claimed these bonds appeared in the public prints? I allude now to the letter of Gov. Hamilton, and my own notice in the New York Herald.

A. I do not know as I ever saw a statement of the fact in the public prints. I may have, but I have no recollection of it.

17. Q. Will you state how soon Mr. Huntington, after he got this notice of the claim by Texas, made other purchases, or presented at your office other bonds than the ones you now refer to?

A. I am not able now, from any papers I have here, to give the dates. I will send for such papers as contain the information.

18. Q. While they are being sent for, I will ask you the general question, whether Mr. Huntington, when he presented the third set, had already been notified of the claim of Texas?

A. He was notified of that claim about the time of the presentation of the second set—that is, those presented the 6th of October.

19. Q. What explanation did he give when he came with the 107 third set. Did he say then he had bought in good faith?

A. I do not know as the papers show any explanation, and I do not remember now whether there was any or not.

20. Q. Please state the character of the transaction which you refer to in your answer in this case, as having been had with the bank or agent of the bank at the time of this redemption, in January or February, 1867?

A. The State was making claim to those bonds and suit, especially in relation to some presented by John A. Hardenburg, of New York, and Birch, Murray & Co., had been entered. In fact the State of Texas had laid claim to all, and had brought a personal suit in the supreme court of the district against Mr. McCulloch, Secretary of the Treasury, on account of them, though I think that suit did not embrace those held by the bank—at least not all of them. That is my recollection.
108 The papers will show. It was agreed between the attorney of Hardenburg and the Secretary, that the bonds held by him should be paid upon the deposit of an equivalent in 7-30's, to abide the determination of the ownership of the Texan bonds. Those were to be placed in my hands as trustee. A short time after that Mr. Huntington wanted his paid, and the Secretary declined to pay them. Mr. Huntington proposed that the same thing should be done with his bank, and it was done. To show what was the arrangement, as understood by the Secretary, I give you a copy of the letter addressed by him to Mr. Huntington about a year afterwards.

(Correspondence made part hereof and marked "D," J. O. C.)

(Judge Moore, counsel for defendants, objects to the letter of Mr. McCulloch being made part of the deposition of the witness.)

The arrangement was made between the Secretary and Mr. 109 Huntington. I had some talk with perhaps both of them about it, but had nothing to do with making the arrangement, as it was a matter in which I had no personal interest.

21. Q. As I understand this correspondence which has been made a

part of your deposition, states the history of the transaction as understood by yourself and Mr. McCulloch at the time of the redemption?

A. Yes, sir; Mr. McCulloch's letter, as I understood by Mr. McCulloch.

22. Q. Can you tell now which of those bonds went into this arrangement?

A. My answer to the bill, I think, states that. I think there is perhaps an error on the reference to one of them.

Witness, after the examination of certain papers, asks that the question may be repeated, when counsel said:

23. Q. I asked if you could identify the number of the bonds that went into that transaction? My object was to get an explanation of what I thought to be a discrepancy between your answer and the facts of the case.

110 A. Numbers 4960 to 4963 inclusive, $4,425 00 coupons. Five
coupons for other bonds, at $25 00 each, making $125 00. Numbers 4927, 4928, 4929—was that the difference you refer to?

Counsel. That is the difficulty—whether 28 or 29.

Witness. I have both of them. No. 4228 was paid Fiske & Hatch. The statement in Mr. Huntington's letter is: No. 4827, 4828, 4829, 4843, and 4844. Three coupons to 4843 and two to 4844.

24. Q. How much in gold does the whole amount to?

A. Those named, with the coupons make $9,675 00.

25. Q. What others now went into the same arrangement?

A. I find at the same time No. 4703, 4705, 4706, 4748, 4813, 4825, 4912,
4226, 4227, 4229. To those bonds there were fifty-six coupons of
111 $25 00 each. That makes the gross amount I reported of
$11,400 00, with interest.

26. Q. Do I understand that you adopt your answer in chancery in this case as a statement of the facts as you understand them?

A. Yes, sir; unless I am mistaken about one number.

27. Q. Were all these bonds of the class of unindorsed bonds, so-called, i. e., not endorsed by the governor of Texas?

A. Neither of them had been endorsed by the governor of Texas.

28. Q. Have you any means of knowing how many of them were what we call the White & Chiles bonds. In other words, you have written me that you believe four of them were not.

A. I am not able to state without looking over the whole matter. It may be I have a copy of that letter. If I have I can tell, for I examined
the matter thoroughly at that time. It was in looking over some
112 papers that I discovered the fact you have mentioned. It was
from a letter of Epperson and Walton, agents of the State of Texas, that I learned that those four bonds were in the hands of N. B. Pearce, one of the late military board of Texas, as late as June 30th, 1865. They were numbered 4960, 4961, 4962, 4963. Those four were not of the White & Chiles bonds.

29. Q. The others, you have reason to judge from all your examination, belonged to the White & Chiles lot?

A. That is my opinion from the examination of the others paid to the First National Bank.

(At the request of solicitor for complainant, witness produces copies of papers relating to the redemption in each case, affidavits, &c., which are made part hereof, and marked "E," J. O. C.")

30. Q. This deposit that we have been referring to here; how does it
stand now; the one that Mr. McCulloch refers to in his letter
113 to Mr. Huntington, and the one you refer to in your previous

answer; is that fund still under your control, or, rather, the control of the Department?

A. It stands just as it did when I made my answer.

31. Q. Do you receive the interest on it?

A. I do.

32. Q. When did these Texan indemnity bonds mature?

A. They were payable, by their terms, after the 31st day of December, 1864.

33. Q. Do you remember the fact of Peabody & Co. having 149 of those bonds protested here for non-payment?

A. That was a fact known in a general way, but I did not know it personally.

34. Q. It became known publicly, did it not, after Texas put in its claim the 1st of October, 1865, or about that time, that the United States was not paying these bonds because of the claim of Texas?

114 A. I do not know how far it was publicly known that the Government would not pay White & Chiles' bonds.

35. Q. Do you know about what time Mr. Secretary Chase gave notice that they would not be paid, or instructed officers not to pay them?

A. I do not think he ever gave any notice to anybody not to pay them, because they were not due while he was in office.

36. Q. Well, not pay the coupons?

A. He wrote, as I learn from the records of the Department, sometime in 1862, to the assistant treasurers at New York, Boston, Philadelphia, and perhaps some others; he did not give positive directions not to pay them, as I understand, but there were some expressions in his letters which seemed to treat the coupons as being different from the bonds themselves; his direction was not to pay them unless they seemed to come through the hands of bona-fide holders.

115 37. Q. This letter of Mr. McCulloch's, dated on the 26th of May, 1868, to Mr. Huntington, did you write it yourself?

A. Yes, sir; at the request of the Secretary; and I know it contained the views he entertained from the first.

38. Q. Will you state whether Mr. Huntington replied to this letter?

A. I do not think he did. I should say further, in answer to that question, that Mr. Huntington had, on various occasions prior to that—very soon after the 7-30's were deposited here with me, asked to have them returned to him, and talked with me; I do not know whether he talked with the Secretary or not, but I always referred him to the Secretary, to whom I personally mentioned the subject myself; I know from that, that the Secretary always held them to abide the result of the ownership, not of the suit against him.

116 39. Q. I will ask you to state if, at the time the original transaction took place, that is, the time of depositing the securities, and the redeeming of the bonds, this letter contains what was the understanding between Huntington and McCulloch.

A. It contains the understanding, so far as Mr. McCulloch was concerned.

40. Q. So far as you are concerned?

A. So far as I was concerned, there was nothing particular said to me about it; the general idea was, and the expressions, perhaps, used when speaking of Mr. Hardenburg's case, were, that they were to be held as indemnity to the Secretary. My own opinion about it was that it meant just what the Secretary thought it meant; I have no recollection of hearing them talk together about it, but each one talked with me separately on the subject.

41. Q. And you derived the same understanding from both?

A. I do not know that I got any other understanding from Huntington at the time, of the particular object of it, but I did from
117 the Secretary; and I cared more about his understanding than
I did about Mr. Huntington's; he would talk with the Secretary, and then the Secretary would talk with me.

42. Q. Can you state the substance of what Mr. Huntington said at the time he deposited the 7-30 bonds, as stated by you, in regard to the object and the purposes of such deposit?

A. My recollection is, that a clerk from the bank brought the 7-30's to me without any letter, or any instructions, just handed them to me, and went away.

43. Q. Had you had any previous conversation with Mr. Huntington, in pursuance of which the 7-30 bonds were sent to you; and if so, what was the conversation?

A. I do not recollect any conversation with Mr. Huntington; I recollect the fact that there was something said between us on the subject, but very little; the conversations that I had were with the Secretary, and his conversations on the subject were with Mr. Huntington.

118 44. Q. Please state if the theory upon which the Government
paid any of these unendorsed bonds, was not that it was not material to the negotiation of these bonds, whether they were negotiated before or after maturity.

A. We never thought it necessary that the bonds should be endorsed. We thought the State had substantially repealed the law requiring it prior to the rebellion. We thought then, however, where the State claimed the bonds, that the parties holding them should show that they were bona fide holders; that they were purchasers in good faith, and for a valuable consideration. We did not deem the fact that they were past due as materially affecting the title, and we had the opinion of the Attorney General to the effect that the fact of being past due, did not open questions of title; that where paper was past due, it only opened equities between maker and payee.

45. Q. You have stated that, from the circumstances, you ident-
119 ified nineteen bonds. Do you mean from the examination you
have given the records in the office?

A. I learned from the evidence taken in relation to many of the bonds that were redeemed, and some that were outstanding, and which never have been presented, what bonds could not have been of the White & Chiles lot, generally. Then there were others that, from the circumstances connected with the title of the holders, from the way in which they came, and from the parties who held them, I judge to be of the White & Chiles bonds.

46. Q. So that you first learned what were not of the White & Chiles bonds, and then afterwards, what were?

A. Yes, sir.

47. Q. In all these transactions of Mr. Huntington with the Government, was he acting officially as cashier of the First National Bank, in relation to this matter?

120 A. All the papers addressed by him to the Department were
official, and the conversations that I had with him in relation to the matter indicated that he was acting on behalf of the bank.

48. Q. State if you have any means, and what, of telling the numbers of the bonds delivered to White & Chiles. If yea, please state the numbers and your reasons for believing those are the numbers.

A. I have some means, but not of the highest certainty as to all of them.

Mr. Moore. Mr. Tayler, are you reading from your evidence in the Supreme Court case?

Witness. Yes, sir.

Mr. Moore. I object to the witness doing that.

Mr. Brent. You can refresh your memory, Mr. Tayler, by looking at the printed copy of your evidence.

Witness then proceeded as follows:

The whole number of bonds issued to the State of Texas, was
121 5,000 of $1,000 each numbered from 1 to 5000, inclusive. All or
nearly all of them, up to and including No. 4218, have been redeemed
and partly from my own observation, and partly from information received from the loan branch of the office of the Secretary of the Treasury, and also from other sources, I can say that the bonds from No. 1 to 4218, inclusive, were endorsed by loyal governors of the State of Texas, and disposed of prior to active rebellion in that State. From a printed report made to Gov. Hamilton, October, 30, 1865, by E. M. Pease and Swante Palm, and from correspondence had with the treasurer of the State, I am able to say that of the remaining 782 bonds, numbered from 4219 to 5000, inclusive, 634 went into the possession of the military board of the State, and that 148 were delivered to the Southern Pacific Railroad Company, in pursuance of laws of the State passed prior to
the rebellion. The numbers taken by the miltary board were
122 4219 to 4694 inclusive, and 4843 to 5000 inclusive. Those
delivered to the railroad company were 4694 to 4842, inclusive. R.
& D. G. Mills, of Galveston, Texas, received from the military board 100 bonds to be used for rebel purposes, but were subsequently called upon to return them. At that time, 34 of the 100 had passed out of their immediate control, and they could return but 66 of them. They, however, obtained from the S. P. Railroad Co., 34 of the bonds held by that company, and these, with the 66 on hand, were delivered to the State authorities. I have not been able to obtain a list of the 34 thus returned. These facts are learned from an affidavit of one of the Messrs. Mills, who, having recovered 25 of the 34 received from the military board, presented them for payment. These 25 were numbered from 4295 to 4319 inclusive. Four others of the 34 were paid to Victor & Duckwitz,
and were numbered from 4277 to 4280, inclusive. The 20 bonds
123 stated in the letter of Mr. Harris as being in the hands of Oliver,
of Monterey, were numbered from 4320 to 4339, inclusive. 300 bonds, numbered from 4395 to 4694, inclusive, were sent to England during the year 1862, of which 149 were sold to George Peabody & Co., numbered from 4395 to 4543, which have been redeemed. The others, 151, are believed to be yet in England, numbered from 4544 to 4694, inclusive. The following-described bonds were recovered by the U. S. military authorities, and delivered to the State authorities on the suppression of the rebellion, viz, 4219, 4340 to 4394; 4853 to 4878, 4948 to 4959; 4964 to 4975, 4985 to 4990, numbers inclusive, making a total of 112 bonds. The evidence on file in the Department shows rather those that were not of the White & Chiles bonds than those that were, and this evidence is so voluminous that I have not had time
to examine it fully. I believe, however, that I may safely name
124 the following as of those delivered to White & Chiles, viz, 4281
to 4289, inclusive; 4883 to 4895, inclusive; 4896, 4897, 4898, 4899 to 4911, inclusive; 4913, 4914, 4915; 4232 to 4234; 4237 to 4248; 4777 to 4843, 4844, 4912, 4927 to 4929; 4930 to 4947; 4916 to 4923; 4879 to 4880; and the bonds paid to the bank, except the four I have named from N. B. Pearce.

Cross-examined by Judge Moore, counsel for def'ts:

49. Q. Mr. Tayler, other bonds besides the White & Chiles lot of Texan indemnity bonds were paid by the Department here, which were unendorsed by the governor of Texas.

A. There were a large number of them paid. Some of such were paid to the agents of the State. Those unendorsed that were paid, were numbered above 4218.

50. Q. Do you mean to say that you are clear in your recollection that any of these Stanton bonds were in fact paid to Mr. Huntington?

125 A. I can state how I know Mr. Huntington received the payment. The first lot of bonds, as already stated, were presented by Mr. Stanton. I reported on the 9th of September, recommending their payment. They were paid on the 12th, as I get my dates from the Secretary's office. I learned this from Mr. Stanton and Mr. Huntington, that a draft was delivered after my report was made. It was in the evening perhaps—in some way I learned it was in the hands of some of them—after the business hours at the Treasury, and that Mr. Huntington gave the money to Mr. Stanton, who left the city that night. After he had given the money, however, some difficulty arose—whether it was the White & Chiles matter, I do not recollect—but there was some trouble that delayed payment; but it was paid to him finally. I learned that from Mr. Huntington.

51. Q. I want to know if you did not, from the same source and at the same time, learn the fact that the bank really had no interest in these Stanton bonds?

126 A. My recollection of the fact, as I learned it at the time, is that the bank advanced the money to Mr. Stanton after the payment was allowed here. I will say that I may be wrong in stating that the draft had been issued when the trouble about payment was stated. It may have been that the draft was delayed because of that, and was finally given to Mr. Huntington, who had advanced the money to Stanton.

52. Q. Do you know the precise time at which Mr. Huntington purchased any of these bonds?

A. I do not.

53. Q. Do you know that he had any knowledge at the time he purchased them, that any one or more of them had ever been in the hands of White & Chiles?

A. I do not know that he had.

54. Q. You have already stated that when the second lot of bonds were presented for payment, that you had then come into possession of the fact that Texas had a claim. I will ask you if you were able even
127 at that time, or any officer in the Treasury Dep't, to identify any bond in the hands of Mr. Huntington as having come through the hands of Chiles?

A. I was not able to do it at that time.

55. Q. Do you not know the fact that Mr. Huntington applied to you, and applied to Mr. W'm E. Chandler, who was then Ass't Sec'y, to know if you could identify any of those bonds, when you notified him Texas had a claim on bonds.

A. I do not know that he ever applied to me to let him know what the bonds were that Texas claimed as the White & Chiles bonds.

56. Q. You state, however, that you could not have done so if he had?

A. I could not at that time.

59. Q And this information upon which you now base your opinion

as to which *as to which* are the White and Chiles bonds, you have derived subsequently to that period by various transactions and investigations?

128 A. Subsequently to the time that he presented his first lot—that is, subsequent to the 6th of October, and my information is derived from a large number of papers in the Department.

R. W. TAYLER.

Sworn and subscribed to before me this 3d day of August, A. D 1869.

JA'S O. CLEPHANE, *Examiner*.

Without concluding the cross-examination of the witness, adjourned to meet at the same place, at 10 o'clock a. m., on Wednesday, Aug. 4th, 1869.

JA'S O. CLEPHANE,
Examiner in Chancery.

1869, Aug. 4th. Met pursuant to adjournment—present, Hon Geo. W. Paschal, solicitor for complainant, and Hon. J. W. Moore, solicitor for defendant—

The cross-examination of witness R. W. Tayler was resumed.

By Mr. MOORE:

129 Q. Mr. Tayler, I will ask you to state if there was any endorsement or any mark upon those bonds which would have enabled you to tell they had ever been in the hands of White & Chiles?

A. No, sir.

1. X. Q. Had you ever seen George W. White or John Chiles, up to the time of this transaction between Huntington or the bank, and the Department?

A. I never had.

2. Q. Did either of them ever present any one of these bonds to the Department—I mean any one in person—but Huntington.

A. I think not.

3. Q. Do you know of your own knowledge that White & Chiles, or either of them, ever saw one of these bonds?

A. I knew it only from the papers on file in the Department, that is, from my opinion, of what those papers show.

4. Q. It would be a very tedious process (and I presume you could not do it) to furnish the various papers from which you make up your opinion?

130 A. They are too numerous for me to present here now, and I might add, that one would have to study them very carefully and make his calculations as to the different bonds.

5. Q. Would you not have to do so by ascertaining the entire number of bonds, and then tracing those bonds into the hands of persons other than White & Chiles; would not your opinion be based upon the conclusion that, inasmuch as so many bonds were in the hands of other people, it followed, as a necessary result, that if White & Chiles had any, they must be those?

A. It would be by taking the 782 bonds that were not endorsed, and tracing them back, by the evidence, into the hands of those parties who held them at different times, and ascertaining in some instances, the particular numbers that were known to be in the hands of particular parties before the transaction between White & Chiles and the military

board, and taking others again, that came from the State of
131 Texas, and then drawing my conclusions as to what were White
& Chiles bonds.

6. Q. I want to know if you are the author of a certain report recommending the payment of these bonds.

A. Yes, sir; I wrote that report.

7. Q. Please furnish me with a copy, as I desire to have it made a part of your deposition.

A. I will.

(Report produced by witness made a part hereof, and marked "F," J. O. C.)

8. Q. State if, in your examination-in-chief, in answer to an interrogatory propounded by the plaintiff, you did not read a part of the deposition which you had heretofore given in the suit pending in the Supreme Court of the United States, between White & Chiles and Texas.

A. I read part of my answer to the third interrogatory in that case;
I read it because it was a statement of the facts that I had writ-
132 ten myself, and believed to be correct as I stated, and to save
the trouble of looking all over it again. There were some errors
in the figures, made either in the printing of the deposition, or inadvertently made in writing it out. Those I, of course, corrected; they were such errors as were patent upon the face of the paper itself.

9. Q. In your examination-in-chief you have stated that Mr. Huntington deposited the 7-30 bonds upon the same conditions that Hardenburg had deposited his bonds. I desire you to state how you got the information that the deposit of the 7-30's made by Huntington was upon the same conditions?

A. I did not state, nor did I intend to state, that they were made upon the same conditions; what I intended to say was, that Mr. Huntington, learning that bonds had been deposited, asked that the same thing be done with him, and that his conversation on the subject was with the Secretary.

10. Q. And that you did not hear?

A. No, sir; he spoke to him, and the Secretary spoke to me.

133 11. Q. Did you write this letter found upon page 96 of the
printed record, in the case of The U. S. vs. White & Chiles, Supreme Court of the U. S., signed by Robert W. Tayler?

A. I wrote the letter under date of February 19, 1867, addressed to Hon. S. S. Cox, on page 96 of the printed record.

(Letter made a part hereof, and marked "G," J. O. C.)

12. Q. Had the suit against Mr. McCulloch been withdrawn when this negotiation with Hardenburg's agent was entered into?

A. I am not able to say whether it had been withdrawn or not when the Hardenburg arrangement was made; my impression is it had been when the arrangement with the bank was made.

13. Q. In redeeming these Texas indemnity bonds, state whether or not you did not act in accordance with the determination of the De-
partment as to what was right in the premises, and also in ac-
134 cordance with the opinion of the Attorney General.

A. In redeeming the bonds we acted here in accordance with what we thought was the law; I do not know that the Attorney General had given any opinion on the subject at the time this transaction took place, unless it was in relation to some paid to Mills and those paid to Peabody & Co.; that was, however, probably prior to this payment. The opinion of the Attorney General in relation to past due obligations with the Government was given in another case, but it covered the question as to over-due paper.

14. Q. What does the record of the Department show in regard to the payment of the bonds in controversy in this suit? I mean the bonds redeemed by the Treasury to the bank; Does it show anything beyond the fact that they were paid; is there any entry upon the record as to how these 7-30's were to be paid?

A. There is no entry of the trust upon the record of the Department.

135 15. Q. Does the record of the Department show the fact whether or not these Texan indemnity bonds were redeemed or paid, and the 7-30's deposited?

A. The official record shows the payment of the bonds to the bank, just as it shows payment to any other party of the same kind of bonds, and shows nothing of the trust that I know of.

16. Q. I will ask you whether or not these bonds were not, in fact, redeemed or paid?

A. They were redeemed or paid in the way which I have stated.

Re-examination by Mr. Paschal for complainant:

17. Q. I want to know, whether, in reference to those bonds, in form redeemed, for which securities were substituted, it was not understood between you and the Secretary, and Mr. Huntington, and acquiesced in all 'round, that they were a part and parcel of the White &
136 Chiles bonds, and if you did not all act upon that theory in the transaction which did take place.

A. The Secretary and I regarded them as of the White & Chiles bonds. I cannot say as to Mr. Huntington.

18. Q. I asked if Mr. Huntington did not act upon that supposition of yours, and treat them as White & Chiles bonds.

A. Mr. Huntington may have acted upon that supposition, but he acted as he was obliged to act by the decision of the Secretary, so that there was no occasion for discussing a question of that kind.

19. Q. As I understand it, the objection made to Mr. Huntington by the Department was that they were White & Chiles bonds, and therefore would not be paid, and the proposition by him was that he would substitute other securities in order that they might be paid. That is about what took place, isn't it?

A. I understood that they were regarded as of the White & Chiles bonds by the Department, and that the Secretary was unwilling
137 to pay them under the then existing circumstances, except upon the deposit of the equivalent in 7-30's.

20. Q. I will ask you this question, whether, in regard to all the bonds presented by Huntington for the bank, including those presented on the 6th of October, 1865, and the subsequent bonds, they did not carry evidence that showed you that the bank purchased them after they were due—that is, after the 1st of January, 1865?

A. As I have already stated, Mr. Huntington said that he had purchased these bonds upon the faith of the action of the Department in paying those held by Stanton. That payment was made on the 12th of September, 1865, and consequently all other purchases by him must have been subsequent to the 1st of January, (1865.)

21. Q. And must, therefore, have been after the bonds were due?

A. I cannot testify as to that.

138 22. Q. I see you have made the White & Chiles contract a part of your evidence in a previous case. Will you be kind enough to have a copy prepared and annexed to your deposition in this case?

A. I will do so.

(Copy of White & Chiles contract with the military board furnished, made part hereof, and marked "H," J. O. C.)

23. Q. I see in your previous deposition on page 78 of the printed record, you make the protest of George W. Paschal against the payment of these and other bonds a part of your evidence, and also a copy of the letter, which I then transmitted to you, of Gov. A. J. Hamilton. Those were true copies as given by you?

A. Yes, sir.

24. Q. Then, if there be no objection, I will have you annex the protest and letter as there found to your deposition, as part of the same.

139 (Judge Moore, of counsel for defendants, said he had no objection to the printed copy being used, but did object to the competency of the papers, and desired the objection noted.

Protest and letter annexed hereto, and marked "I," J. O. C.)

25. Q. If I understand correctly, there were remaining in the treasury of Texas at the time of the passage of the ordinance of secession, 782 of these Texas indemnity bonds, unendorsed by Gov. Houston or any of his predecessors?

A. I so understand it.

26. Q. And that, up to that period, all others that ever came to this office had been endorsed by Gov. Sam. Houston, or one of his predecessors?

A. That is as I understand it.

27. Q. And whether or not they required this endorsement was a mere opinion as to a matter of law with you?

140 A. That was my opinion of what the law was—my opinion as expressed in that report to which you have referred. I will add that it was not only my opinion that no endorsement was required or necessary at any time, but, in addition to that, that the legislature of Texas had in substance repealed that provision of the act of 1851.

28. Q. This protest made by Geo. W. Paschal against the payment was persisted in both by him and other agents of the State?

A. The protests that were made were never withdrawn to my knowledge.

Re-cross-examination by Mr. Moore:

29. Q. Mr. Tayler, I desire you to furnish a list of all the unendorsed Texas indemnity bonds which have been redeemed by the Treasury, and annex such to your deposition as a part of the same.

A. I will do so.

141 (List of redeemed Texan indemnity bonds annexed hereto and marked "K," J. O. C.)

30. Q. I think you stated that you did not know that Mr. Huntington, at the time he purchased any of these bonds, was apprised that they had ever belonged to White & Chiles, or that Texas had any claim upon them on account of White & Chiles. I am speaking now of the time when he bought them.

A. I do not know that he was advised that these or either of them had belonged to White & Chiles, or been in their possession, but he was of the general suspicion of the fact; and I will add that the stoppage of payment here of the bonds at first had reference to those that had gone into the hands of White & Chiles, and to those only.

31. Q. Do you mean at the time he bought?

A. I mean at the time the first objection was made.

32. Q. That was the 12th of September?

142 A. It was just about that time or within a few days afterwards.

33. Q. Do you know that Mr. Huntington was advised of Judge Paschal's protest, or that of anybody else at the time he bought these bonds?

A. I do not know that he was advised of the particular form in which the objection came, or protest made against their payment. He was advised in a general way as to the ground of objection to payment at the time, or about the time the fourteen bonds were presented—that is, the 6th of October, 1865—but I do not know that he was informed that it was by protest of the State of Texas. I am not able to say that was so.

34. Q. I think you stated yesterday, that you did not know when he bought those bonds.

A. Of course I cannot tell when he purchased them, but it was subsequent to the 12th of September.

R. W. TAYLER.

Sworn and subscribed to before me this 4th day of August, 1869.

JA'S O. CLEPHANE,
Examiner.

143 *Deposition of Geo. W. Paschal for compl't.*

1. Q. Judge Paschal, you will please proceed to state in detail all you know in regard to these Texan indemnity bonds; when issued; how issued; and what disposition was made of them.

A. The Texan indemnity bonds were stock issued under the act of Congress of the United States, of the 9th of September, 1850, and the act of the legislature of Texas, of the 25th of September, 1850; which act is printed in Paschal's Digest of the Laws of Texas, Articles 443 to 450. By an act of 16th December, 1851, printed in the same book, Article 5320, Texas received 5,000 of those bonds. That law required that they should be endorsed by the governor of Texas before they should be negotiated. After paying debts and other expenses of Texas, there remained in the treasury 2,000 and upwards of these 5,000 bonds, 144 and by an act of the legislature of that State, they were set aside as a special school fund. This was the act of 31st of January, 1854 (Paschal's Digest, Article 3434.) A subsequent law authorized their being loaned to railroads (same volume, Article 3499.) Under the system of lending to railroads, at the date of the ordinance of secession, in 1861, there remained 782 of these bonds in the treasury, as I had occasion then to learn in the business of the State. The legislature of Texas, by several acts of the 11th of January, 1862, created a military board, which were to take possession of any bonds in the treasury and to use them to aid in the defense of the State, according to the provisions of those acts. The military board sent three hundred of them, unendorsed, to London, by John M. Swisha. As will appear from papers in Mr. Tayler's evidence, in January, 1865, this military board made a contract with White & Chiles in regard to $156,000 worth of these bonds. The bonds were not actually delivered until 12th of 145 March, 1865, as appears by receipt of White & Chiles, printed on the 77th page of record, in the case of the "State against White & Chiles." When Gov. Hamilton had organized the provisional government of Texas he found this receipt, and at that time, no other evidence of the transaction. That receipt he placed in my hands. I commenced suit in the district court of Travis County, Texas, against White &

Chiles, but could obtain no service. I came to Washington with the
receipt, and arrived here on the day of the payment to Mr. Huntington
for Stanton, as sworn to by Mr. Tayler. I immediately gave notice of
the claim of Texas to these bonds held by White & Chiles, and of all the
other unendorsed bonds which had gone into the hands of the military
board. I was instructed by the Secretary of the Treasury to correspond
with Mr. R. W. Tayler, the 1st Comptroller. I laid the whole matter
before him by letters and protest. I was present in the Comptroller's
Office when the bonds passed to Birch, Murray & Co., by Chiles, were
presented for redemption, and, according to my best judgment, I there
identified them as part of the White & Chiles bonds. Payment
146 was refused, and Birch, Murray & Co. so informed. I caused
notice of the fact of the refusal to appear in the money article of the
New York Herald. This was from the 1st to the 5th of October, 1865. I
should have stated that I had demanded the return of the bonds, of George
W. White, in Washington, very soon after my arrival here; and he stated
it was out of his power to deliver them, and that he would not do so, but
stand upon his contract. I caused to be inserted in the New York Tribune of the 10th of October, 1865, the caution to the public, signed A.
J. Hamilton, and dated 12th of September, 1865. I had received this in
New York, the previous day, and with it a certified copy of the contract
with White & Chiles. I saw the substance of that article, and the money
articles in several of the leading papers of the United States. I returned
to Washington and filed with Mr. Tayler, 1st Comptroller, the written
protest and the letter of Gov. Hamilton, which appear in that
147 printed record, and are made part of his evidence. I took every
means in my power to give the public notice that the Government of the United States had refused to pay these unendorsed bonds,
and I know that payments were refused at different times through the
year 1866, while I had the business in charge. I have seen the protest
of 149 of the bonds which was presented by George Peabody & Co., and
which recited that the Secretary of the Treasury refused payment because they were not endorsed, but I have no control of that paper. I
was employed by Gov. Pease to prosecute this suit, and caused it to be
instituted in 1868; and judging from a careful examination made in
Texas, and the Treasury Department here, I feel confident that the
bonds redeemed for the bank, described by Mr. Tayler, were a part of
the bonds which passed through the hands of White & Chiles, and
I judge this from the circumstances which he has stated. I
148 can here state that, prior to the ordinance of secession, I know
that it was the opinion of every branch of the government of
Texas, that these bonds could only be negotiated by endorsement by
the governor. I remember a controversy between Gov. Houston and Mr.
Johns, the comptroller, on this subject, in which the governor refused to
endorse bonds for the comptroller to bring to Washington to secure the
specie. We all then regarded it as necessary. The law requiring that
endorsement was repealed by the legislature of Texas, on the 11th of
February, 1862, the same day of the other acts about the military
board. I soon afterwards wrote to Mr. Chase, Secretary of the Treasury, of the passage of this act, and my knowledge that the bonds would
be used for rebel purposes, and requested that the coupons on them
should not be paid; and I have seen evidences that he acted upon the
facts communicated to him, and that George Peabody & Co. learned of
this action and enjoined the proceeds which they had paid for a
149 part of the bonds, in the hands of bankers in London, in consequence of it; and that that injunction remained until the 149

bonds were redeemed for Peabody. The law setting aside these bonds to the school fund has never been repealed. I desire to have annexed to my deposition, this copy of the notice in the printed record, which I have compared and find to be correct.

(Copy of notice annexed hereto, and marked , J. O. C.)

Cross-examined by Judge Moore, counsel for def'ts:

2. Q. You say that you arrived in the city on the day that these Stanton bonds were paid?

A. Yes, sir.

3. Q. Did you bring any document from the executive of the State of Texas, showing your authority officially to enter protest against the payment of the bonds, or was it a verbal communication to you?

150 A. I brought a general power of attorney from Gov. Hamilton to do every thing that he could do before the Government of the United States—such a one as I now hold from Gov. Pease. I brought a special power of attorney from Gov. Hamilton to collect some coupons upon the bonds remaining in the treasury—I think 112—upon those recovered from the treasury. I brought the power of attorney to collect the coupons then matured upon those bonds, and I was put in communication, by Gov. Hamilton, with the President, and all Departments of the Government on matters appertaining to Texas, so that my authority was general and special. I came here as a special agent of Texas—so described in all my dispatches and powers; but I have been employed as the attorney of Texas to prosecute this very claim against White & Chiles. I had sued in the courts of Texas before I left but was unable to get service.

4. Q. Could you, when you arrived here, have identified any of these indemnity bonds; I mean any of those that were in the hands of White & Chiles?

151 A. I could only have identified them as bonds unindorsed by Gov. P. H. Bell, Gov. Pease, Gov. Reynolds, or Gov. Houston. I did, satisfactorily to myself, identify those paid to Huntington for the use of Stanton, because I found the affidavit of John P. White, a brother of George W. White, attached, and I was thus able to trace them as having come through that source.

5. Q. And the affidavit of John P. White enabled you to do so because he was the brother of George W. White.

A. I inferred so from the fact that they passed through his hands and through the hands of a Nashville man, Douglass, I believe his name was. I thought I saw clearly that they appertained to that class, and from those numbers, knowing that the authorities of Texas had taken off the bonds, consecutively, from No. 1 of the 782. I knew about where these numbers would begin, but I was at a loss about the precise numbers, because I wanted to describe them in Texas, and I could not certainly identify them.

152 6. Q. Did you know Mr. Huntington then?

A. No, sir; I made his acquaintance afterwards. I will remark here in the same way when the bonds of Birch, Murray & Co., came with the direct statement that they got them from Chiles, it afforded evidence of another batch by which to identify the numbers. I may add that S. M. Severson was here, having the last bonds ever indorsed by Gov. Houston, redeemed. He had sixty. Mr. Tayler was then not in the city; he was in the West. Mr. Jones was acting as first clerk. I was called in to state whether or not the signature of Sam. Houston was genuine, for it was denied in the Department here. None of the parties here knew Severson. It just happened that I remembered seeing Houston endorse these bonds. Knowing the transaction as I did—knowing that it was his signature, through the aid of Severson then here—we fixed the number of the last bond (the same described by Mr. Tayler) that Sam. Houston ever endorsed.

7. Q. I will ask you if you know whether or not there is a written
153 contract in existence—a compromise between the State of Texas
and White & Chiles, made since the institution of the suit in the Supreme Court of the U. S.?

A. I know not one word of it except what I derived from Tayler and Merrick, who drew it up, and whose version of it is given in some of the printed papers. I will state that when the question about that contract sprung up, I applied to the governor for it, and both by written communication and an assurance of the governor in the city the other day—Gov. Pease—I am advised there is no such paper among the files of the Texas archives, and no evidence of it except what is contained in the letter of Governor Throckmorton. I have made every effort I could to get hold of it, but I have not been able to do so. John Chiles admitted to me that two of the bonds, the numbers of which I do not recollect, which were in the hands of Jay Cooke & Co., and which were relinquished to me for Texas, were two of the bonds which
White & Chiles received from the State of Texas, and were filed
154 here by Jay Cooke & Co., having been held for the use of Chiles,
and surrendered to me as part of the lot. Nos. 4879, 4880 are the numbers referred to me. They have since been redeemed for me as the agent of Texas, under the decree of the Supreme Court of the U. S., in the case of the State of Texas vs. White & Chiles et al.

GEO. W. PASCHAL.

Sworn and subscribed to before me this day of August, A. D. 1869.

JA'S O. CLEPHANE,
Examiner.

Adjourned to meet at the office of the cashier of the First National Bank on Tuesday morning, August 5th, at 10 o'clock a. m.

JA'S O. CLEPHANE,
Examiner.

(Postponed from day to day, until the 21st of August, 1869, on account of absence of W. S. Huntington.)

155 1869. August 21st. Met pursuant to adjournment—

Present, Messrs. Paschal & Brent, for complainant, and the witness W'm S. Huntington.

Adjourned until August 26th, 1869.

1869. August 26th. Met pursuant to adjournment—

Present, Messrs. Paschal & Brent, counsel for complainant, and W. E. Chandler and J. W. Moore, counsel for defendants.

The examination of witnesses was proceeded with as follows:

Deposition for Simon Wolf for complainant.

Examined by Geo. W. Paschal, solicitor for compl't:

1. Q. I see from the records in this case that Mr. Huntington states

he purchased certain of the Texan indemnity bonds from you.
156 Please examine the facts and state them as you understand them;
and especially whether you recollect or have any memorandum showing from whom you received those bonds or any bonds?

A. To the best of my recollection, in August, 1865, Wolf, Hart & Co., received for collection from A. Haas & Co., of 159 Front street, New York, nine Texas bonds, with coupons, which bonds we gave into the hands of Stanton & Walker for collection. The question of their not having been endorsed, as per act of the legislature of Texas, by the governor, being then before the Treasury Department, they were not at once paid. Shortly afterwards, Comptroller Tayler delivered an opinion, upon the strength of which these bonds were ordered paid. It was on Saturday, I think, when the warrant was made out, but too late to get the money that day. Stanton saw Mr. Huntington, cashier 1st Nat. Bank, and asked him if he would not be kind enough to advance the money on that day; inasmuch as the warrant would be paid on
Monday, and one of the members of our firm wished to go to New
157 York that night, and take the money with him. Mr. Huntington
advanced the money as requested; first satisfying himself as to the correctness of the warrant. As far as I know, that was the first intimation that Mr. Huntington had of the Texan bonds. At least I know this: that when I returned from New York, he asked me whether any more of these bonds could be purchased. I told him I would see; in the latter part of September, or early part of October, I am not certain which, we received an additional lot of $14,000 00, or $15,000 00 worth of Texan bonds, which were also taken to Messrs. Stanton & Walker. Mr. Stanton and myself called upon Mr. Huntington, and submitted them to him. Between the time of the first payment, and the receipt of this second lot, Judge Paschal had come here and protested against any
payment of the White & Chiles bonds. Mr. Huntington, fearing
158 these might be of that class, requested the use of the bonds for
two days, that he might submit them to the Treasury Department, and ascertain whether any of the bonds for collection, were of the suspected lot. He kept them two days, and then said he had satisfied himself that the bonds were all right, and bought them either at 92c. or 94c.; I am not certain which. It might have been 96c. in gold. Subsequently to that another lot was received, and the same precaution taken by Mr. Huntington. These bonds were all received from A. Haas & Co., we simply acting as attorneys for collection for them. We never owned any of these bonds—neither the firm, nor I as an individual. I never saw White & Chiles; never had any correspondence with them, or any knowledge of them, except such as the papers furnished. A. Haas & Co., to the best of my knowledge, were loyal men, and innocent holders of the bonds. In January, or February, when I returned from a trip
to New York, I told Mr. Huntington that I could purchase for
159 him $3,300 00 worth of the bonds of the same class, without
coupons, and $3,700, with coupons, giving him the number of the bonds. He authorized me to purchase them for him at 90c. in gold, and stated he would give me two per cent. for commission. That is all the knowledge I have of the matter; I made the purchase for him, and received the commission of two per cent.

2. Q. When you say that A Haas & Co., were innocent purchasers, you mean, you do not know anything as to how they got them.

A. No, sir; only from their statement, and, I believe, the affidavit accompanying the bonds. I know the question regarding their loyalty and innocence as to possession, was first raised with regard to the seven or eight thousand dollar bonds that they submitted and fully considered, and their loyalty and innocence conceded by the Government.

3. Q. All these bonds of which you speak were unendorsed bonds—that is, not endorsed by any governor of Texas?

160 A. No sir; they were not endorsed.

4. Q. You were at that time aware of the act of the legislature of Texas?

A. I was aware of it, and thought the question was settled by the decision of the Comptroller, and the fact of the Government having paid the first bonds. If the first bonds had not been paid by the Government, there never would have been any other transaction.

5. Q. If you thought that settled the matter, what did you think was the reason of their selling them at a discount. It is not usual to sell these bonds at a discount?

A. Because the bonds here had been laying sometime. You are aware that several parties in New York, as well as in this city, had bonds of the same kind, and Mr. Chase, or some subsequent Secretary of the Treasury, Mr. Fessenden, I think, objected to their payment.

6. Q. Do you know when Mr. Chase first made known that objection?

161 A. I do not; I knew nothing of the Texan bond matter, until these bonds were submitted to us.

7. Q. Were you not aware before they were submitted to you of the protesting of 149 of them in behalf of Peabody & Co.?

A. I was not aware of that.

8. Q. Were you not aware that the public papers had stated that the Government was not paying these Texan indemnity bonds?

A. I was not; I had no knowledge of any Texan bonds, until the first lot was sent to us for collection.

9. Q. I understand from your statement, then, the first lot was sent to you by A. Haas & Co., and that all subsequent ones that you had, you got in the same way?

A. Yes, sir; from the same source.

10. Q. And that after the first lot you acted between Mr. Huntington for the bank, and A. Haas & Co., in the negotiation?

A. I cannot say exactly that.

11. In other words you bought and sold?

162 A. We received them for collection, and I was authorized to sell them at certain figures, and did sell them.

12. Q. Had you presented them to the Treasury before you sold them?

A. No, sir; in fact I did not present them to Mr. Huntington either. It was Mr. Stanton who was really the man, except in the last transaction.

13. Q. You say the first payment was made on Saturday, and my protest was made the following Monday. When did you first learn of it—the protest of Texas?

A. I think after I returned from New York, when Mr. Huntington said he would have to take the bonds for the purpose of submitting them to the Treasury, to know whether they were of the lot against which you protested.

14. Q. Didn't I understand you to say that that was about the 1st of October?

A. I do not exactly remember the date. The warrant was ready for payment on Saturday, but it being too late to receive the money
163 from the Treasury Department that day, Mr. Huntington, as a matter of accommodation, cashed the draft.

15. Q. Before you sold to Mr. Huntington you knew there was such a protest as that filed by me?

A. I have already answered that question. Such was the information given me by Mr. Huntington.

16. Q. You knew that these were overdue bonds when you received them, did you not—that is, that they were payable the 1st of January preceeding?

A. I only know that they were of the same character of bonds as those which had been paid by the United States a week or two prior.

17. Q. You say you would not have taken them but for that opinion of Mr. Tayler (which had been published) as to his notion of the endorsement?

A. I say we would no longer have received any for collection, if the
United States, themselves, had not set the example by paying
164 them out of the Treasury, based upon an opinion given by Mr.
Tayler.

18. Q. Did I understand you to say that what you paid you paid in gold?

A. Yes, sir; gold drafts on New York, less our fee for collection.

19. Q. And the first set you sold either at 92c. or 94c.?

A. I think 94. Mr. Huntington thinks 96. I would not be positive. The next were the same. The last lot that I purchased for him direct in New York, by his authority, I purchased for 90c. and received 92c.

20. Q. How many were there?

A. Three bonds, with coupons attached. I think $3,725.

21. Q. Did the fact that there were so many coupons unpaid raise no suspicion, either in your mind, or Mr. Huntington's, that all was not right?

A. I do not know what suspicion it raised in Mr. Huntington's mind;
it raised none whatever in mine. I thought I was simply
165 purchasing for him, and gave him the numbers, and did not
think anything more about it.

22. Q. Was it usual for the United States securities to have so many overdue coupons on them?

A. I do not know what is usual, not being a banker, and not being familiar with such transactions; I only know the facts as they transpired. I had the bonds and coupons before me, and sold them as I have stated.

23. Q. Did Haas & Co. limit the price?

A. I really do not remember. I think, though I am not positive, that they agreed to take so much in coin for the bonds, and I had to run the risk of collecting and selling.

24. Q. Do you remember how much that was?

A. I do not.

25. Q. Do you remember how much you made by the transaction?

A. I do not know. I think it was five per cent.

166 26. Q. Five per cent. from them, and two per cent from Mr. Huntington?

A. Oh, no, sir; I am speaking of the first. From the first two lots I received nothing from Mr. Huntington. It was in the last lot that I received two per cent. commission from Mr. Huntington.

27. Q. Then you charged Haas & Co. a commission of five per cent. for the second lot, that is, the first you sold to Huntington, and these $14,000 worth?

A. Yes, sir.

28. Q. Didn't I understand you to say you got two per cent. from Huntington on that same transaction?

A. No, sir; on the $3,725 00 that he authorized me to buy for him outright.

29. Q. Did you buy that same set from Haas?

A. Yes, sir; but received no compensation from them.

30. Q. What did you give Haas & Co.?

A. 90c.

31. Q. Who paid it, you or Mr. Huntington?

A. Mr. Huntington gave me a draft on New York—a coin draft.

167 32. Q. It was his money, or that of the bank?

A. Yes, sir.

33. Q. You say you had become convinced the Government would pay them. Why then, as the agent of Haas, would you sell them at less than par. What induced you to do it?

A. Your protest having been filed, several warrants, which were ready for payment were withheld. They fearing that some time might elapse before they would receive payment, preferred to sell them outright and receive the money, as they were doing business as commission merchants, and having use for all their money, rather than to await payment by the U. S. authorities.

34. Q. Have no reason to know that they were also informed that these bonds came through White & Chiles?

A. No, sir; None in the world.

35. Q. Then the only cause you know of, as I understand you, why these gentlemen would take less, and you would sell for less, was
168 the fact that the agent of Texas had protested against the payment of the bonds?

A. The only reason I know of is the one I have stated, that they preferred to sell outright, so that they could make use of their money, (they being commission merchants, and having use for all their money,) rather than to wait an indefinite period of time.

36. Q. Until the protest settled the matter?

A. An indefinite period, in consequence of warrants laying there in the Treasury Department because of the protest.

37. Q. You say they were commission merchants?

A. Yes, sir.

38. Q. Not regular brokers at all?

A. No, sir. That was outside of their particular line. They were what you might call "cotton-brokers."

39. Q. Was this same reason spoken of between you and Mr. Huntington as to why they would take less than ten per cent.?

169 A. No, sir. There was no conversation between Mr. Huntington and myself. It was a mere business transaction of sale. They were submitted to him, and I supposed he knew. Certainly no one would have paid a commission of four or five per cent. for bonds which were likely to be paid at any moment, unless there was some reason for it. I presume that Mr. Huntington knew the reason.

40. Q. I see that, in the affidavit which Mr. Huntington filed, he stated that he purchased from you. Was he aware that he purchased from you as the agent of another?

A. That I am unable to say.

41. Q. In whose favor was the draft that he gave you drawn?

A. I think it was drawn in favor of Mr. Stanton.

42. Q. I speak now of the second lot?

A. I am speaking of the second lot. I think the drafts were made payable in favor of Mr. Stanton, and he endorsed them.

43. Q. Have you brought the letter of Haas & Co. with you?

170 A. There were no letters accompanying them at the time they were sent here for collection. I think the parties either brought them here in person, or they were sent by express.

44. Q. By "parties" do you mean the members of the firm of Haas & Co.?

A. Yes, sir.

45. Q. Your instructions—were they verbal or in writing?

A. They might have been both. Very likely they were. By looking over our files of letters I can tell.

46. Q. Did you keep a copy of your correspondence with them?

A. Our firm did, if there was any correspondence on the subject.

47. Q. Will you be kind enough to look; and, if you find any such correspondence, furnish the examiner with a copy?

A. I will.

48. Q. Can you, at the present time, fix the dates of the several transactions with your firm?

171 A. No, sir. I will have to refer to my books.

S. WOLF.

Sworn and subscribed to before me this 26th day of August, 1869.

JA'S O. CLEPHANE,
Examiner.

Mr. Brent desires to have the examiner note:

"That the examination of the witness Wolf is closed with the understanding that he is to be recalled for the purpose of fixing the dates of the various transactions referred to in his testimony—he stating that he is unable to do so without reference to his books, which are not accessible at this time; and that the counsel for the defendants declines to cross-examine the witness until the examination-in-chief is completed by the fixing the dates of the various transactions referred to, as requested by counsel for complainant." 172

Mr. Moore desires to have it stated that the defendants' counsel protest against the latter portion of the entry just made, claiming that they (the defendants) have no right to go on with the cross-examination until the complainant has closed his examination-in-chief.

Thereupon the complainant's counsel announce themselves ready to go on and complete the examination of the witness, except in the particular aforesaid—the witness being unprepared to give the information desired.

The re-examination of the witness is postponed until Saturday morning next, at 10½ o'clock.

173 *Deposition of W'm S. Huntington for compl't.*

Examined by Mr. Brent, counsel for complainant:

1. Q. Please state your name and occupation?

A. W'm S. Huntington. I am at present, and have been for some time past, since its organization, cashier 1st National Bank.

2. Q. Please state when you first became aware that any Texan indem-

nity bonds were presented at the Treasury for redemption, or were in the market for sale?

A. On Saturday afternoon, 9th of September, 1865, Mr. Stanton and Mr. Wolf came to me, and stated that they were about getting a warrant through the Treasury, but that it was too late to complete it that day, and asked me to cash it for them in order that one of them might that night go out of town to New York. I at once went to the Treasury with those two gentlemen, and found the warrant, and incidentally learned that it was in payment of the Texan indemnity bonds. 174

3. Q. You looked at a memorandum, apparently refreshing your memory with it. Please state whether that memorandum was made at the time to fix that date.

A. No, sir; it was taken a short time ago from our books.

4. Q. You have no independent recollection of the date, except from the entry in your books?

A. No, sir.

5. Q. Have you any objection to producing the original books of the bank, from which you took this memorandum, that we may examine them so far as relates to this transaction?

A. No special objection.

6. Q. Then will you show them?

A. I have a general objection to showing the books of the bank.

7. Q. Will you let us see the memorandum which is copied from the books?

175 A. In the answer of the defendants in this case, you have an exact copy of this memorandum.

8. Q. I repeat, are you willing that we should see the memorandum now in your hand?

A. I am. Here it is. (Handing memorandum to counsel.)

9. Q. By the memorandum now handed to us, it appears that, on the 9th of September, 1865, you paid Mr. Stanton $10,000. Was it in gold?

A. I gave a gold draft on New York for $10,000, less the current rate of exchange.

10. Q. At that time did Mr. Stanton state to you, or were you otherwise informed, who his principal was?

A. No, sir; I knew nothing about the transaction, only what I have before certified to. He asked me to cash a warrant. The warrant was in his own name. He went on over to the Treasury, and assigned it. It was properly assigned to me so that, on Monday, I received the money.

11. Q. That was the first knowledge you had in regard to the Texan indemnity bonds being in the market?

176 A. Yes, sir.

12. Q. You had nothing to do with the Texan indemnity bonds before?

A. No, sir.

13. Q. Between that date and the 9th of October, had you any further knowledge of Texan bonds, or of any question being made about them?

A. I do not recollect. I know that, at one time, I heard rumors through newspapers and otherwise that there was some trouble about the payment of the Texan indemnity bonds. What that trouble was, I did not know.

14. Q. Was that before your first transaction with Mr. Wolf?

A. I do not recollect.

Q. You do not recollect whether these rumors of trouble about these

Texan bonds, which you had before heard or read of, were before your first transaction with Mr. Wolf or not?

A. Exactly.

15. Q. What is the date of your first transaction with Mr. Wolf in regard to Texan bonds?

177 A. Ninth of September—Wolf and Stanton together.

16. Q. The first transaction with Mr. Wolf alone?

A. 9th of October, 1865.

17. Q. Your first transaction, when Mr Wolf purchased bonds for you, was the 9th of October, 1865?

A. I do not say that he purchased bonds for us.

18. Q. Did you buy them from Mr. Wolf on that day; was he acting as your agent?

A. I bought them from him.

19. Q. What induced you, before you would consent to close that transaction, to go to the Treasury and make an inquiry as to whether those were White & Chiles bonds, if you had not heard previously of some question being raised about those bonds?

A. I probably had heard before that time; I did not say I had not heard. I said I did not recollect when I had heard.

20. Q. Do you recollect that, when you bought the first batch of bonds, on the 9th of October, or about that date, from Mr. Wolf individually, that you did take them, and go to the Treasury, and make inquiry about them?

178 A. I recollect distinctly that I never bought any of those bonds without going to the Treasury, and making full and explicit inquiries about them.

21. Q. Then I ask you if you had not, prior to the 9th of October, 1865, heard the question made in regard to these bonds?

A. Yes, sir.

22. Q. What was that question that you had heard made?

A. It was not stated. There was a general statement that there was some question about the payment of bonds. What bonds was not stated.

23. Q. You were advised there was some difficulty about the payment of the same Texan bonds.

A. Exactly.

24. Q. The name of White & Chiles bonds was not given to you.

A. It was not confined to White & Chiles bonds. I did not know what the objection was. I knew there was some difficulty.

25. Q. And that induced you to go and make the inquiry?

179 A. Exactly.

26. Q. Do you recollect who you saw on the first occasion when you went to the Treasury?

A. I saw the Secretary of the Treasury, and the Assistant Secretary, and 1st Comptroller Taylor.

27. Q. Did they state to you what the difficulty was?

A. I do not know that they did particularly; I asked them, in presenting these numbers, if these were the numbers that they had objection to, and they said they thought not. They thought they would have to be paid.

28. Q. You made an affidavit at that time, did you not?

A. Yes, sir.

(Affidavit produced, and read, and marked , J. O. C.)

29. Q. How comes it you did not pay until the 9th?

180 A. I do not recollect; I think that Mr. Wolf left them with

me, and I would not pay them until I had first submitted them to the Treasury.

30. Q. Then I ask you the question if you can say whether or not, on the 6th of October, when you made the affidavit, you had or had not paid for these bonds at that date?

A. I cannot account for the difference between the date in the affidavit, and the entry on our books, of the day of payment.

31. Q. In point of fact the payment was not made until the 9th.

A. I do not know about that. It was not entered on our books until the 9th.

32. Q. Can you tell us, from your books, upon what day the draft was given, and upon what firm in New York—the first transaction—the one which appears on the 9th of October.

(Before answering, witness, with the consent of counsel, retired for the purpose of making an examination of certain papers.)

A. It is a mistake about October 9th. Upon a re-examination
181 I find that it was October 6th, instead of October 9th, that I paid the money.

33. Q. Then the entry in your books is a mistake?

A. There is no mistake in the books. My evidence was taken from this memorandum here.

34. Q. And that memorandum was taken from your books?

A. No, sir.

35. Q. Didn't the memorandum produced by you, show that you paid the money on the 9th of October?

A. That memorandum was not correct. I have referred to the original memorandum, and find that it was on the 6th of October.

36. Q. Will you permit me to see the original memorandum?

A. I will.

(Witness hands Mr. Brent the paper referred to.)

37. Q. I ask if you mean to say that this is an original memorandum of the date of the payment of the money to Mr. Wolf?

182 A. Yes, sir; that is the original memorandum given to me by the clerk in charge, from which the first memorandum handed you was made by me. I made a mistake in copying from that original memorandum. By "original memorandum" I do not mean one made at the time of the transaction, but the first of the two memoranda which have been shown to you. I have just had handed to me, however, the original draft, which shows it to have been on the 6th of October, the draft bearing that date.

(Draft presented to counsel for inspection.)

38. Q. Can you say from this draft, whether your purchase was really 94c. or 96c.?

A. The amount mentioned there is the exact amount we paid—$14,500 00 in gold.

39. Q. How much did you get for that?

A. $15,050.

40. Q. On the same day there appears to have been $1,050 in the name of Stanton?

A. Yes, sir; it is the same thing. Wolf & Stanton were together.

41. Q. Have you any evidence whether you paid that $1,050 to Mr. Stanton separately?

183 A. All the evidence we have is that draft.

42. Q. This lot of bonds was not paid until January, 1866, you had learned before the payment of the claims of the White & Chiles bonds?

A. I wish to say here that I cannot swear that I had heard anything about the White & Chiles bonds; I had heard and known that, during the rebellion, Secretary Chase had refused to pay any Texan bonds, because he thought the proceeds might go to help the rebellion. For those general reasons I would not buy any Texan bonds before going to the Treasury, examining the papers, making inquiries, &c. I will say that it does not follow, because I did go to the Treasury to inquire about these bonds, that I had heard of the White & Chiles bonds.

43. Q. Had you not read the articles in the New York Herald and Tribune, signed by Gov. Hamilton?

A. I have never read them even to this day.

44. Q. What reason then did they give you, at the Treasury,
184 for suspending the payment on the 6th of October and there-
after, until the January following? Why didn't you get your money sooner?

A. They suspended the payment of all Texan bonds until they could examine them. Mr. Tayler has very often suspended payment for months in cases where payment ought to have been made the same day, and without assigning any reason whatever.

45. Q. Before you went to the Treasury Department to inquire about these bonds, you had agreed upon the price?

A. If found satisfactory. I purchased them conditionally.

46. Q. Will you state why you were to give only 96 and a fraction for gold bonds, which, if satisfactory, would be paid at par.

A. A very good reason. Gold was fluctuating all the time, and it took that margin, in buying gold, within a week, or ten days, or more.
Although we were satisfied that the bonds were all right, and
185 had been told, at the Treasury Department, that *that* they would
pay them; yet, knowing that there would be some delay, we made that discount.

47. Q. In the other case, when you bought from Wolf, himself, if you paid 96c., and then gave him two per cent. commission, you gave 98c. in all?

A. Yes, sir.

48. Q. How long after the first purchase from Mr. Wolf, was it that you requested Mr. Wolf to buy?

A. I do not recollect.

49. Q. But you recollect you did request Mr. Wolf to get some of those bonds for you?

A. I do not know that I requested him, in so many terms, to buy those bonds; I may have said to him, if you can get hold of some more of those bonds, you might make money out of them.

50. Q. Can you fix how long it was after the date of your first purchase that you brought the second batch from Mr. Wolf?

A. That is already in my written testimony—in my answer.

186 51. Q. You have no recollection of dates other than those dis-
closed by your books, and memoranda in the bank, and which you have endeavored to incorporate in your answer?

A. No sir.

52. Q. When did you first hear that White & Chiles had anything to do with these bonds?

A. I have no idea.

53. Q. Are you not in the habit of reading constantly daily publications in the public prints in regard to financial securities?

A. Always, when I have time.

54. Q. Don't you generally take time?

A. About that time I was up here until 11 or 12 o'clock at night, and didn't read the papers at all.

55. Q. You can state at least this, that you bought none of those bonds for the bank without having examined them and read the face of them?

A. I do not know as I examined them particularly. I took the bonds
and submitted them as they were to the Treasury, and,
187 then being assured that they were all right and would have to
be paid, there was no reason why I should stop to examine them.

56. Q. You did not then stop to examine them to ascertain whether they were indorsed, were over-due, or anything of the kind?

A. No, sir.

57. Q. You just presented them to the Treasury, and when you found they would be paid there, you closed the transactions?

A. Yes, sir.

58. Q. State when you first furnished indemnity, or substitute securities to the Secretary of the Treasury in consideration of the redemption by him of the Texan indemnity bonds held by you, or your bank?

A. I do not understand that I ever did. Mr. McCulloch had been threatened, not as Secretary of the Treasury, but individually, with suits, and although we were satisfied the bonds ought to be paid to us, yet
(he) fearing some personal damage to him, I deposited some 7-30
188 notes with Mr. Tayler, as trustee, with the understanding that if
Mr. McCulloch ever suffered any loss by having, as Secretary of
the Treasury, paid any of those bonds he should be indemnified.

(Mr. Brent desired it noted that this answer of the witness was not responsive to the question put by him, the question propounded being as to the time when he made the deposit referred to.)

59. Q. Didn't Mr. McCulloch require you to deposit the securities mentioned by you, before he would redeem certain Texan bonds which were presented by your bank?

A. No, sir; it was a proposition of my own, having heard that he hesitated, and that payment was delayed because he feared some personal damage.

60. Q. At that time had you not heard there was a suit in the Supreme Court, brought by Texas against certain parties claiming a right
to these bonds?

189 A. I heard there was a suit about being commenced.

61. Q. In the Supreme Court?

A. That I didn't know.

62. Q. I want to know whether, when you made this proposition which you say was a voluntary proposition on your part, you had then heard that a suit was about to be brought by the State of Texas for these bonds.

A. I heard there was a suit about to be brought, whether by the State of Texas or who, I did not know. That suit, as I understood it, was not of these bonds, but for certain Texan bonds. What bonds, I did not know.

63. Q. When you made this proposition you had then knowledge that a suit was about to be brought for some of these Texas bonds?

A. I had no knowledge. I had heard a rumor.

64. Q. And you knew the Secretary hesitated, and therefore you made this proposition to put up security in order to get the redemption
of the bonds?

190 A. I was anxious to have the bonds paid at the earliest practicable moment.

65. Q. Did you pay the money to the parties from whom you purchased those bonds until the Secretary had accepted your indemnity of 7-30's.

A. Yes, sir; paid the money the moment we received the bonds. Several months elapsed before we received the money from the Treasury.

66. Q. Then, as I understand you, there was a distinction between your knowledge and information at the time you paid the money and the time you made this proposition, that is to say, you had heard when you made the proposition that suit was about to be brought?

A. That there was some trouble about Texan bonds.

67. Q. Had you heard that when you bought the bonds?

A. I do not think I had.

68. Q. But when you obtained a redemption of the bonds by putting up that which you call indemnity, you then had heard that a suit was about to be brought?

A. Yes, sir; against certain Texas bonds.

191 69. Q. Do you mean to say that you did not understand that a suit was to be brought for these bonds when you proposed to give indemnity?

A. Certainly I do.

70. Q. Do you mean to say that at the time you obtained the redemption of the bonds for which you gave indemnity, that you understood and supposed that those bonds that you were obtaining the redemption of were not the bonds concerning which suit was to be brought?

A. I had no idea whether they were the bonds or not.

71. Q. Were you told at the Treasury that they were not the bonds for which suit was likely to be brought?

A. I was not told anything about it.

72. Q. I will repeat the question. I ask whether at the time you obtained a redemption of these bonds, by substituting an indemnity, you did not suppose those bonds—the Texan bonds which were thus
192 redeemed—were bonds about which there was trouble, and about which a suit was brought?

A. I did not know whether it affected those bonds or not. I was entirely in the dark in regard to the matter.

73. Q. Did you understand that Mr. McCulloch hesitated about paying those bonds?

A. He did not hesitate about paying those bonds any more than the others. There was always a long delay about all the bonds presented there.

74. Q. You had previously obtained bonds without indemnity.

A. I might have obtained payment for these if I had waited long enough. Hearing that suits were likely to be brought, I thought I would get the bonds paid before the suits were brought, thinking they might possibly affect some of our bonds.

By Mr. Paschal:

193 75. Q. On the 23d of March, 1868, I believe you wrote a letter to the Secretary of the Treasury, referring to the redemption of certain Texan indemnity bonds on the 25th of February, 1867?

A. Yes, sir.

(Counsel read the letter of witness of date referred to, annexed to Mr. Tayler's deposition, and marked "D," J. O. C., and then asked him if that did not contain what he understood to be the transaction at the time.)

A. I did not write the letter. It was written by a clerk, and I do not know that it does give the legal view of the question as entertained by me now.

76. Q. But it gives what you understood the fact to be?

A. I do not know as it gave the legal state of the question. The clerk, who had charge of the transaction, wrote it, and I signed it.

77. Q. How did the clerk know anything about what to write if you did not tell him?

194 A. He might have gotten an idea from the fact of the bonds being placed there, that they were to indemnify the Government.

78. Q. I see you sign the letter. I want to know if you did not direct the clerk what to write.

A. Not specially. I simply told him to make a formal demand for those bonds. He drew up the letter, and I hastily read and signed it. I thought it covered the case.

79. Q. I see the only reason you give Mr. McCulloch why you want him to turn over this fund to you is that you were not included in that suit. You also state in this letter that at the time this arrangement was made there was such a suit. Those two facts were in your mind pretty clearly when you wrote; were they not?

A. I simply state this, that I directed the clerk in charge to make a formal demand for those bonds, and he wrote it as he understood it and, thinking it covered the case signed the letter.

195 80. Q. You state this fact in this letter that you made the indemnity under the impression that they were included in the injunction-suit, or had been enjoined; that you thought was a part of the case; didn't you? What I want to know is, if you did not write this letter and urge the return of the funds, simply because you were not made a party to that suit?

A. That might have been the ground. The clerk who made the entry wrote the letter, and I thought that covered the case.

81. Q. Mr. McCulloch on the 26th replies to that letter. Did you ever respond to that reply?

A. Not in writing, but I denied repeatedly the statement therein contained, both to Mr. McCulloch and to Mr. Taylor.

82. Q. But you never answered in writing?

A. No, sir.

83. Q. Do you remember any fact that it does state that you disagree with as a fact?

A. It says they were in form paid. They were absolutely paid, and I got the money.

196 84. Q. But as far as they state the fact that you put these up, because there was a suit pending, it is correct?

A. There was no suit pending then, affecting these bonds to my knowledge.

85 Q. You mean there was no suit pending against your bank; you do not mean affecting these bonds? We claim an injunction is a notice to all the world.

A. We had received no notice of any injunction. We had no knowledge of any injunction when these bonds were paid.

86. Q. You mean you received no notice of any injunction against you, but you had received notice of the injunction against the bonds?

A. I had heard of the Hardenburg suit, but did not know whether it referred to these bonds.

87. Q. The statement here though, as regards the amounts on deposit here, is correct; isn't it?

A. Yes, sir; I believe so.

88. Q. Had you received notice of the pendency of the suit against you when you wrote that letter of the 23d of March?

197 A. No, sir; I am pretty sure of that.

89. Q. Then as I understood you a while ago, at the time you made the arrangement with Mr. McCulloch you had heard of the Hardenburg suit?

A. I had heard of threatened suits. I do not know whether I had heard of the Hardenburg suit or not.

90. Q. Mr. Tayler states in his deposition that, at the time you made the proposition, you stated that you knew that Mr. Hardenburg made a similar arrangement, and you desired to make a similar arrangement?

A. Yes, sir; I do not know whether Hardenburg had been sued, or threatened with suit or not, but I heard he had made an arrangement.

91. Q. You say when you wrote that letter you did not have the legal idea you have now. When did you first get it into your head?

A. I say the letter was written by the clerk, and gave his idea about it. I glanced at it hurriedly, and, without giving it much consideration—without looking at the legal bearing, signed it.

198 92. Q. Did the clerk have anything to do with Mr. McCulloch when the arrangement was made?

A. All he knew about it was, I deposited bonds there, and the Texan bonds had been paid.

93. Q. Did your bank make an entry of it?

A. Simply a memorandum, placed with the rest of our bonds, showing $30,000 bonds, 7-30's, had been taken out and deposited at the Treasury.

94. Q. When you parted with that much cash, you certainly charged it to something?

A. I did not charge it to anything.

95. Q. Didn't you enter it on the cash-book, charged in the same way?

A. No, sir.

96. Q. Do you keep any account of your bonds?

A. Yes, sir.

97. Q. Didn't you carry these to it?

A. The bonds on hand agree with the amount charged on hand. We counted so much on hand, and do yet. They are still counted as being on hand.

199 Cross-examination by Mr. Moore:

98. Q. I want you to state exactly your understanding more specifically of the object in depositing those 7-30's. Were they put up as indemnity against personal liability that Mr. McCulloch might incur by redeeming these Texan indemnity bonds, or were they placed there as substitutes for the Texan indemnity bonds, to abide the result of any suit that might be brought against you?

A. For the former reason. The latter question was never raised.

99. Q. When these Texan indemnity bonds were redeemed by the Secretary of the Treasury, was there any condition whatever attached to the redemption of these bonds that looked to any suit against the bank?

A. None whatever. Never had heard—never supposed there would be any suit against the bank, after they were paid, especially.

200 100. Q. Had any one notified you or informed you that either of these bonds which you then held had ever been in the hands of White or Chiles, or either of them?

A. No, sir.

101. Q. When you applied to the Secretary of the Treasury, and the Assistant Secretary of the Treasury, who was then Mr. Chandler, and the Comptroller, as you have stated—when you applied to them to be informed as to whether there would be any objection to the redemption of these bonds, did you make the inquiry looking to every possible objection that might be urged, or did you address your inquiries as to any particular bonds?

A. I just submitted the bonds to them, and there gave the answers I have told you, that they would have to be paid.

102. Q. Was it or not upon the faith of that answer, and the payment that had already been made by the Secretary of the Treasury of divers similar bonds, that induced you to purchase?

A. Altogether upon the strength of that.

103. Q. Mr. Huntington, so far as you prosecuted inquiries in
201 the Treasury Department from the gentlemen you have named,
was there any mark, or any other sign on either of these bonds,
by which they could be distinguished as the White & Chiles bonds.

A. They told me there were none; they told me they could not identify them.

104. Q .Did there appear upon any of the bonds with which you were acquainted any sign, mark, or letter, by which the White & Chiles bonds could be distinguished?

A. No, sir.

105. Q. Had you ever been acquainted with White or Chiles, or either of them, up to the time you redeemed these bonds?

A. Never had seen them.

106. Q. Did you or not sign this letter about the bonds, which was addressed to the Secretary of the Treasury over your signature, because you regarded it as a demand—simply a demand for the bonds, without criticising its language, to see what legal effect it might have?

A. Yes, sir; that is what I before stated.

202 107. Q. I want you also to explain if the statement as to the
number and amount of the bonds, of which you have furnished
the list in your answer, represents that this payment to Wolf was on
the 9th of October—if it is correct or incorrect.

A. It is incorrect. It should have been the 6th, and the mistake was in copying.

108. Q. You have been asked the question in the examination-in-chief whether your attention was called to the fact that these Texan indemnity bonds were overdue. I desire to ask you if, in your experience in dealing with the Government here in Government securities, bonds of various descriptions, &c., it has been the practice of the Government to pay off such obligations without reference to whether they were due or overdue, when they found them in the hands of bona-fide purchasers?

A. Yes, sir; I should think, probably, one-third of that last issue of 7-20's were not presented until after maturity.

109. Q. How many were presented through your bank?

203 A. I cannot tell without referring to the books.

110. Q. You can tell whether thousands or hundreds of thousands were?

A. Many millions.

111. Q. And no question was ever made in the payment of such obligations by the Government, as to whether they were due or overdue?

A. None whatever.

112. Q. State if you know of the redemption—of the payment of any bonds by the Treasury Department, when they were overdue, which had actually been stolen.

A. I know the Treasury Department has passed bonds, when they have been stolen, to the innocent holder, after maturity.

(Objected to by Mr. Brent.)

By Mr. Brent:

113. Q. What knowledge have you personally of these bonds having been stolen?

204 A. Having collected the bonds myself, and the claims being made at the Treasury, and, as before stated, it being an undisputed fact, I was satisfied they were stolen. So was the Secretary, and so were the clerks in charge—all parties who had any knowledge of the transaction.

114. Q. You had no personal knowledge?

A. I did not see the man who stole them; if I had, I would have had him arrested.

W'M S. HUNTINGTON.

Sworn & subscribed to before me this 26th day of August, A. D. 1869.

JA'S O. CLEPHANE,
Examiner.

Adjourned to meet on Saturday morning, August 28th, at the same place, at 10 o'clock a. m.

JA'S O. CLEPHANE,
Examiner.

205 1869.—AUGUST 28TH.

The re-examination of Simon Wolf, witness for complainant, was resumed by Mr. Brent.

1. Q. Are you now able, from an examination of your books, to fix the dates of the various transactions referred to in your testimony of Thursday last?

A. I am. The first lot received by us from Mr. Haas, delivered in person on the 28th of June, 1865, and which were paid by the Government on the 11th of September, 1865, were nine bonds and coupons, amounting to $10,000 00. The next were sold on the 28th of September, 1865, to Mr. Huntington. That was the lot of between $14,000 & $15,000 00.

2. Q. On what day were you paid the money for those?

A. The day that I sold them. The next lot were sold on the 11th of November, 1865, and, instead of by myself, were sold by my counsel, Mr. Stanton. That was another lot of $10,000 00 or $15,000 00.
206 The $3,725 00 bought for Mr. Huntington direct, at his instance, were paid for by Mr. Huntington on the 25th of January, 1866.

3. Q. What day were they bought?

A. A few days prior, I suppose.

Cross-examination by Mr. Moore:

4. Q. As it appears from the schedule furnished, that part of these bonds were obtained from Stanton, I want you to state whether it was a fact that Stanton & Walker, as attorneys, were co-operating with you, or you with them, in the collection of these bonds for Haas.

A. They were co-operating with us. We were the original counsel, and we called them in, inasmuch as their reputation and standing with the Treasury Department were better known than ours. The moment the bonds came we acted in common.

207 5. Q. In your negotiations with Mr. Huntington were you aware that Mr. Huntington had any knowledge that there was a special objection to the payment of any bonds, upon the ground that they had been owned by any men named White & Chiles?

(Objected to by Mr. Brent.)

A. I can only repeat what I said in the examination-in-chief, that I have no reason to know anything as to the knowledge Mr. Huntington had, except that he asked the loan of the bonds to take them over to the Treasury to have the numbers examined as to whether they were of the White & Chiles bonds, or suspected lot.

6. Q. State whether or not the suspicion that rested on the bonds did not grow more out of the fact that the State of Texas had been in rebellion than any other cause connected with it?

A. I remember a conversation had at Stanton's office between Gov. Stanton, the Comptroller, and myself, when the first bonds were presented, and Taylor then stated it was his opinion that the Secretaries heretofore had refused payment of these bonds, more because they 208 were uncertain as to the status of the States in rebellion, than because there was any question as to why they should not be paid.

S. WOLF.

Sworn and subscribed to before me this 28th of Aug., 1869.

JA'S O. CLEPHANE,
Examiner.

Deposition of Joseph S. Burnet for compl't.

Examined by Mr. Brent, counsel for compl't:

1. Q. Please state your name, age, residence, and occupation.

A. Joseph S. Burnet; I am 59 years of age; I reside in Washington, D. C.; and am at present, and have been for sometime, corresponding clerk at the 1st National Bank in this city.

2. Q. Can you tell me by examination of your original book of 209 entry on what day money was paid by Mr. Huntington to Mr. Wolf by a draft on New York?

A. My record of the filing of the bonds is the 6th of October. These matters are generally turned over to me immediately upon the negotiation being completed, and I file them in the proper place for payment.

3. Q. How came it to appear in your books that it was unpaid on the 9th of October?

A. The books do not show that Wolf was paid by a check bearing date the 6th of October.

4. Q. When was that check delivered?

A. That I cannot say. That part of the transaction did not come under my cognizance at all. The draft was on Vamilye & Co., New York City.

5. Q. Who is the corresponding clerk?

A. I am.

6. Q. Was notice of that draft sent on?

A. We do not send notices.

7. Q. Did you write that letter to the Secretary, dated March 23d, 1868?

A. Yes, sir.

210 8. Q. At the request of the cashier of the bank, (Mr. Huntington.)

9. Q. From whom did you get the statement as to the terms and conditions on which that deposit was made?

A. I got no precise statement from anyone; I regarded them as ordinary bonds, placed there for the purpose stated there in the letter.

10. Q. Where did you get that idea from; you were not present when the bonds were left with Mr. Tayler.

A. I was not present when the 7-30's were deposited with him.

11. Q. And you have no personal knowledge by being present at the time, as to the terms and conditions upon which they were left?

A. I have not.

12. Q. This letter which you wrote at the request of Mr. Huntington states that, on the 25th day of February, 1867, redemption was made in his (Mr. Huntington's) favor of certain Texan indemnity bonds, amounting to thirty thousand ($30,000 00) dollars, without interest, as indemnity for which, and at the request of the First Comptroller, (Mr. Tayler,) he placed in the hands of that officer a like amount of 211 7-30's. From whom did you get that statement, as you had no personal knowledge of it, that, on the 25th February, when these bonds were redeemed, thirty thousand dollars' worth, a like amount of 7-30's were deposited as indemnity?

A. I found out, about the time that the interest was due on the 7-30 notes, that the 7-30's had been placed there in the ordinary way, and I followed them up and found them; I learned that fact from Mr. Huntington chiefly, and from the books of the bank; I have charge of the collection of interest on the bonds.

13. Q. What did you learn?

A. That the 7-30's were there.

14. Q. How did you ascertain the purpose for which they were put there?

A. That I suppose I ascertained from Mr. Huntington, and this letter I wrote on that assumption, that they were placed there for that purpose.

212 By Mr. Paschal:

15. Q. Have you any recollection of the time when you first heard of the difficulty about these bonds?

A. I cannot give you the dates at all.

16. Q. Did you see the published letter of Governor Throckmorton?

A. I did not; I obtained from the Comptroller a statement of the case, and from that statement, with what I knew of the case, made up this letter.

17. Q. State, if you know, at what time the caveat of Texas, against paying these unendorsed bonds, was filed.

A. No, sir.

Cross-examination by Mr. Moore:

18. Q. Was not the principal object of writing that letter to make a demand of the bonds?

213 A. That was the object—to get possession of the bonds.

19. Q. I will ask you if Mr. Huntington did not state on that occasion, in giving his conversation to you about these bonds, that they were placed there as personal indemnity to Mr. McCulloch, and inasmuch as Mr. McCulloch then had no suit entered against him, and would incur no personal liability, there was no longer any necessity for those bonds remaining in the Treasury.

A. No, sir; I never had any understanding of that kind; there was an impression on my mind that they were left there more to satisfy Mr. McCulloch than anything else.

20. Q. I asked you if the principal object of that letter was not to make a demand of the bonds—to get the bonds from the Secretary.

A. Yes, sir—to get possession of the bonds.

21. Q. Is it not a fact that the letter itself, in its own phraseology, is yours, and not that which was dictated by Mr. Huntington?

214 A. It was not dictated at all; it was made up from the facts of the case, and, as I said before, the statement of the case as contained in the printed record; I endeavored to make as strong a case as I could of it to get the bonds back.

22. Q. And the peculiar phraseology about the character of the indemnity was the suggestion of your own mind, and not that of Mr. Huntington's?

A. Altogether.

J. S. BURNET.

Sworn and subscribed to this 28th day of August, 1869.

JA'S O. CLEPHANE.
Examiner.

Adjourned to meet on morning, August 31, at 10 o'clock a. m.

JAS. O. CLEPHANE,
Examiner in Chancery.

215 1869. August 31st. Met pursuant to adjournment.

Deposition of Hugh McCulloch for compl't:

Examined by Mr. Brent, counsel for complainant:

1. Q. You were Secretary of the Treasury under the last administration?

A. Yes, sir; from March, 1865, until March, 1869.

2. Q. I find on the records of the Treasury Department a letter from Gov. Throckmorton to the Secretary of the Treasury, dated 14th November, 1866, while you were Secretary, in which he makes certain statements in regard to the Treasury indemnity bonds; a copy of it is printed in the records of the case in the Supreme Court of the U. S., page 84. Please examine the copy, as therein found, and state if you have any recollection of receiving such a letter. (Hands witness printed record.)

216 A. I have no recollection of having received this letter; most of the letters of this character were referred to the 1st Comptroller; I have no recollection of having received the letter, although I do recollect of being advised that the State of Texas protested against the payment of certain of the Texan indemnity bonds.

3. Q. As early as that date?

A. I presume so.

4. Q. Prior to the 1st January, 1867?

A. Yes, sir; I do recollect being advised, prior to the 1st of January, 1867, that the State of Texas objected to the payment of a part, as I understood, of the Texan indemnity bonds, then outstanding.

5. Q. What portion?

A. I would say that I was not aware that any objection was made to the payment of any of these bonds, except what were known as the White & Chiles bonds.

6. Q. If that letter was received by you, it was referred to the Comptroller?

A. As these questions went to the 1st Comptroller for his opinion, I judge that this letter was referred to him.

217 7. Q. Do you recollect receiving a letter from Judge Paschal, dated 10th October, 1865, a copy of which appears in this printed record, page 78. (Handing witness said record.)

A. I think this letter was received by me; I recollect receiving a letter from Judge Paschal, and I presume this is a correct copy of it; at what time it was received, I cannot say.

8. Q. You were aware of a suit having been brought by the State of Texas against Hardenburg and others, in the Supreme Court of the U. S., a copy of the bill in which case was filed with you as Secretary of the Treasury?

A. I recollect of being advised that a suit had been commenced by the State of Texas against certain parties.

9. Q. Don't you recollect of seeing a copy of the bill?

A. I have no recollection of it; my engagements were such that I
could not have read it, had it been received: if a copy of such
218 bill had been left at my office, it would doubtless have taken the
regular course, and been referred to the proper department—probably to the 1st Comptroller.

10. Q. State your recollection of any application made by Mr. Huntington after that suit was brought, or after you were advised of such suit, and after these several caveats and protests were filed, for the redemption of certain bonds which he said he had purchased?

A. I understood that Mr. Huntington, as cashier of the 1st Nat. B'k, had presented certain Texan bonds for redemption; I had no personal information as to its being after a suit was brought by the State of Texas in the Supreme Court of the U. S.

11. Q. Who brought that fact to your attention?

A. The 1st Comptroller; I think that the bonds, when presented, were referred to the 1st Comptroller, and that I received what information I had upon the subject from him.

12. Q. Do you recollect for what reason the bonds were redeemed at the time?

219 A. The bonds were paid under a general rule adopted for the payment of the Texan indemnity bonds when presented by innocent holders.

13. Q. I am speaking of the bonds which were redeemed after you had notice of suit—the bonds presented by Mr. Huntington, upon which he left collaterals, or indemnity, as it is called?

A. After understanding that such bonds had been presented, I had a conversation with the 1st Comptroller on the subject, and the conclusion was reached that the bonds should be paid, on the parties depositing certain other securities as collateral.

14. Q. Did you name what the securities were?

A. According to the best of my recollection, that matter was left entirely to the 1st Comptroller.

15. Q. Upon what trust were they to be left on the hands of the Comptroller?

A. The bonds presented by the 1st Nat. Bank, were presented, I think,
before the suit to which you refer as having been brought in the
220 Supreme Court of the U. S., was commenced, and were paid after

certain other securities had been placed in the hands of the 1st Comptroller; what the precise understanding was between the Comptroller and the parties presenting the bonds, I am not advised.

16. Q. You say the conclusion arrived at between you and the Comptroller was, that they were to deposit collateral security before payments?

A. That was my recollection.

17. Q. That was your direction to the Comptroller as Secretary of the Treasury, wasn't it?

A. Yes, sir; that was my direction.

18. Q. Leaving him to judge of the security?

A. Yes, sir; and to settle the details.

19. Q. Explain what you mean by your direction to take collateral security.

A. Having been advised that certain Texan indemnity bonds had been obtained from the State of Texas, by unlawful means, and having been requested by the parties representing the State of Texas to withhold payment of these bonds, and a suit having been commenced in the 221 district court of the District of Columbia, in which suit I was made a defendant, to obtain certain bonds which had been presented for payment, I thought it due to the State of Texas that if the bonds then before the Department in regard to the propriety of the payment of which there seemed to be some question, were paid, the parties to whom payment was made should deposit with the 1st Comptroller securities for the protection of those who might prove themselves to be rightful owners.

20. Q. And that is what you mean when you say in your answer that "it was intended and adopted to protect the rights of the complainant as of others, as they should be finally determined by judicial order or decree?"

A. Yes, sir.

21. Q. These views you expressed to Mr. Tayler prior to the deposit?

A. No, sir; I cannot say these views were expressed by me; the information which I received in regard to this deposit, and the 222 general purpose for which it was made, I think I must have received from Mr. Tayler himself, as the transaction of the business was left with him.

22. Q. He did not take the security before he consulted with you?

A. No, sir; he consulted with me before taking the security.

23. Q. He took it in conformity to the views expressed by you to him?

A. I cannot say that he took it in conformity with my view?

24. Q. Or your adoption of his views?

A. As I said before, he took the securities for the purpose of protecting the parties in interest, but I do not think I gave him a special instruction.

25. Q. State whether you had any interview with Mr. Huntington in regard to the proposed payment of the bonds, and the deposit of securities?

A. I do not recollect that I had any conversation with Mr. Huntington upon the subject. If he brought the matter to my attention, I referred him to the Comptroller.

26. Q. Do you recollect of Mr. Huntington afterwards applying to you to redeem those bonds?

223 A. I recollect that Mr. Huntington made an application to me for authority to withdraw the securities which he had deposited.

27. Q. Did you have an interview with him at that time?

A. I do not know whether I had an interview with him or not.

28. Q. I find annexed to the deposition of Mr. Tayler, the Comptroller, a letter written by him, (Mr. Huntington,) to you on the 23d of March, 1868, and your reply dated 26th March. (Hands witness letter referred to.) I will ask you whether you received any reply from Mr. Huntington, disputing the facts contained in that letter of yours?

A. I have no recollection of ever receiving any letter from Mr. Huntington upon the subject of those bonds, subsequent to my letter to him of the 26th of March, although it is possible that a letter may have been received, and referred to the proper bureau.

224 29. Q. Have you any recollection of having any conversation with him after the date of that letter, in which be protested, or denied the statement in that letter?

A. My recollection is not very definite, but I have an impression that Mr. Huntington called upon me after this letter was received, and stated that the facts therein set forth were not in accordance with the understanding, but it is only an impression.

30. Q. Has that been since the decision of the Supreme Court of the U. S.?

A. Oh, since that I have had repeated conversations with him. The conversation I allude to was before that decision.

31. Q. Can you say how long it was after the date of that letter that you may have had that conversation with him?

A. I cannot say.

Cross-examination by Mr. Chandler, counsel for def'ts:

225 32. Q. In a list of Texan indemnity bonds, redeemed by the Treasury Department, found on page 99 of the printed pamphlet, there appears the redemption, January 17th, 1866, of bond No. 4219, in favor of Hugh McCulloch, Secretary of the Treasury. State whether or not you had any personal interest in this bond, or ever had any personal interest in any Texan indemnity bonds, and if not, why the redemption appears in this form?

A. I had no interest, personal or official, in the bond referred to, nor had I ever any interest in any Texan indemnity bond as I can recollect; nor had I any acquaintance with the owners of any of these bonds, with the exception of Mr. Huntington. Why my name as Secretary of the Treasury appears in the list referred to, as a party to whom payment of a bond was made, I cannot say.

33. Q. It can be easily ascertained at the Department, whose bond that was, I suppose?

A. Yes, sir.

226 34. Q. When you entered the Treasury Department as Secretary, state whether or not you found the redemption of the whole series of Texan indemnity bonds suspended by direction of your predecessor, Secretary Chase?

A. I understood that a portion of the Texas indemnity bonds had been paid while Mr. Chase was Secretary of the Treasury, and that payment of others had been withheld.

(Mr. Brent objects to the witness stating his understanding, as it is manifestly based on hearsay evidence.)

I had no personal knowledge, and could *had* had none of what occurred under the administration of my predecessor.

35. Q. State whether or not you knew, from the records of the Department the reasons which have been given by your predecessor for the non-payment of these bonds, and whether or not those reasons were the non-endorsement of the bonds by the governor of Texas.

A. I made no personal examination of the records—I cannot
227 now say from what sources—the Secretary of the Treasury had declined to pay certain indemnity bonds that were presented for payment, because they did not bear the endorsement of the governor of the State.

36. Q. State whether or not after the close of the rebellion, upon the presentation of Texan bonds for redemption, you directed the 1st Comptroller to re-examine the questions concerning them, whether or not he did so, and delivered an opinion that the bonds should be paid to loyal and innocent holders, although not endorsed by any governor of Texas. If so, will you procure and annex a copy of that opinion to this deposition.

(Objected to by Mr. Brent on the ground of being irrelevant, and as tending to show the legal opinion of the Comptoller upon the state of the case decided by the Supreme Court of the U. S.)

A. After the suppression of the rebellion, certain Texan indemnity bonds were presented to the Department for payment. Having
228 learned, as I before stated, that the payment of these bonds had been declined by my predecessor on the ground that they were not endorsed by the governor, the bonds presented were referred to the 1st Comptroller, with the request that he should carefully examine the question, and give me his opinion whether or not the bonds presented should be paid. The question was examined by the Comptroller, and an opinion in writing, as I now recollect, given to me, in favor of the payment of the bonds when presented by innocent and loyal holders.

(Mr. Brent objects to all parole evidence of the contents of the opinion.)

It will, I apprehend, be in my power to furnish a correct copy of the opinion of Mr. Tayler, and I will endeavor to do so.

(Copy subsequently furnished, annexed to deposition, and marked "L," J. O. C.)

37. Q. State whether or not after the Comptroller rendered this opinion, and up to the time the Department received notice of the
229 White & Chiles transaction, the Department redeemed and continued to pay Texan indemnity bonds in accordance with the advice given in this opinion?

A. It did, each presentation of the bonds being referred to the Comptroller.

38. Q. State whether or not after notice of the White & Chiles transaction the Department made any effort to ascertain the numbers and particular description of the White & Chiles bonds, in order to notify parties dealing in Texas bonds not to purchase White & Chiles bonds. If so, what was the result?

A. I do not recollect what effort was made to identify the White & Chiles bonds. I recollect only of having made inquiries as to whether there was any information in the Department, or within reach of the Department for the identification of those particular bonds; and of having been advised that no such information could be obtained.

39. Q. State whether or not you ever informed the public or any persons inquiring what were the White & Chiles bonds?

230 A. According to my recollection no statement was made to the public in regard to the White & Chiles bonds, because the Department was not in possession of the means of identifying them.

40. Q. State what steps the Department did adopt in response to the request of the State of Texas in order to protect the interests of the State with reference to the White & Chiles bonds?

A. steps were taken that I recollect of, except to advise the Comptroller to examine carefully the bonds that were presented, and the sources from which they were received, in order that he might determine whether or not any of them belonged to the class of bonds known as the White & Chiles bonds.

41. Q. State whether or not you caused to be referred to the Attorney General the question whether or not payment should be made of any of the Texas bonds; if so, as to what bonds, and whether he rendered an opinion on the subject?

A. A large amount of Texas indemnity bonds were presented for payment by a Mr. Morgan, of the firm of J. S. Morgan & Co., suc-
231 cessors to George Peabody & Co., for payment. These bonds,
like others, were referred to the Comptroller. As the amount was large, the Comptroller desired the opinion of the Attorney General upon the propriety of paying them. At the request of the Comptroller, the question of their payment was referred to the Attorney General, who gave an opinion in favor of their payment, and they were accordingly paid.

42. Q. State whether or not the bulk of the Government securities, known as the 7-30's, were redeemed during your administration of the Treasury Department.

A. They were.

43. Q. To about what amount, if you remember?

A. As I now recollect, to the amount of some $800,000,000 00.

44. Q. State the length of time on which the 7-30's were payable.

A. Payable in three years from their respective dates.

45. Q. State whether or not in the redemption of said 7-30's,
232 the question arose as to the rights of purchasers of 7-30's
after the same were overdue; and if so, what disposition was made of that question by the Department?

A. Many questions in regard to the payment of these notes before due, and after maturity, were raised in the course of their redemption. I recollect especially that the question in regard to the right of innocent holders of these notes, which had been stolen, came up for decision. The question was referred to the Attorney General, who gave an opinion that, when these notes were transferred by delivery, it would be proper for the Government to pay, when presented by innocent holders. The opinion of the Attorney General is under date of September 4, 1865, subsequently to which time the larger portion of the 7-30 notes was redeemed, and the redemptions were made in accordance with the opinion of the Attorney General.

47. Q. State whether or not the same rule was applied, so far as you know, to the redemption of all other securities during your administration?

233 A. As far as I know, the same principle was adopted as far as
applicable in the redemption of all other Government obligations.

48. Q. State whether or not a personal action of trover was brought against you in the name of the State of Texas, on account of Texas indemnity bonds, which had been presented at the Department for redemption.

A. A suit was commenced against me as Secretary of the Treasury, and, if I recollect rightly, others, to obtain possession, or to prevent the payment of certain Texan indemnity bonds which had been presented to the Department for payment.

49. Q. Are you able to state that the 7-30's, deposited by Mr. Huntington with Comptroller Tayler, were not deposited as an indemnity

against like personal suits against you, or other officers of the Government, and for no other purpose?

A. The 7-30 notes were deposited with the 1st Comptroller, as I understood, and have before stated, for the protection of the parties who should prove themselves to be the legal owners of the Texan indemnity bonds. What the precise understanding between these parties
234 and Mr. Tayler, the Comptroller, was at the time the deposit was made, I am not able to say.

50. Q. State whether or not the form and details of the arrangement relative to the deposit were arranged by you, or by the Comptroller?

A. They were arranged by the Comptroller.

(Mr. Brent, for complainant, excepts to so much of the above cross-examination as relates to the opinion of the Attorney General and the Comptroller, and the course pursued by the Department in other cases.)

HUGH McCULLOCH.

Sworn and subscribed to before me this 31st day of August, A. D. 1869.

JA'S O. CLEPHANE,
Examiner in Chancery.

235 I find, upon inquiry at the Treasury Department, that the Texas indemnity bond represented as having been redeemed in favor of Hugh McCulloch, Secretary of the Treasury, belonged to the State of Texas, and was paid or redeemed to pay the expenses of M. O. Hamilton, in England, when he went, as I was advised, to reclaim for the State of Texas, as the agent of said State, some the Texas indemnity (White & Chiles) bonds.

The original draft (issued in payment of the bond) is endorsed as follows:

"$751 40 paid for d'f't M. O. Hamilton, ag't State of Texas, on Baring Brothers, authorized by letter of Secretary of the Treasury, dated November 24, 1865,—$248 60 re-deposited as temporary loan, in name of H. McCulloch, Sec'y Tr'y, ac' State of Texas, as per certificate No. 1812, dated Jan'y 17, 1866.

"S. M. MASH,
"Per ANDREW.
"H. McCULLOCH, *Sec'y.*"

236 The temporary loan certificate was paid to, or for benefit of, the State of Texas. It bears the following endorsement:

"Pay M. O. Hamilton or order.

"H. McCULLOCH, *Sec'y.*
"M. O. HAMILTON."

The foregoing I understand to be, and believe to be, the history of the payment of the bond referred to.

HUGH McCULLOCH.

SEPTEMBER, 1869.

237 TESTIMONY ON BEHALF OF COMPLAINANT.

Deposition of Svante M. Severson, taken before James Betts Metcalf, U. S. com'r for the sou'n district of New York.

SVANTE M. SEVERSON, in answer to interrogatories propounded by R. J. Brent, esq., of counsel for the complainant, did depose and say:

I reside at No. 53 First Place, Brooklyn, and do business at 80 Beave

st., New York City. Prior to 1863, for fourteen years, I had been in business in Austin, Texas. I have not been to Texas since 1863. I came to New York in 1865, and have been here ever since. The last appropriation of the State of Texas, prior to the rebellion, was for twenty-five bonds of $1,000 each of the United States Texan indemnity bonds, endorsed for the State by Governor Sam Houston. I became the purchaser of these bonds, partly for gold coin paid by me,
238 and partly for an indebtedness of the State of Texas to me, and
received them from the treasurer of the State. My recollection is that the bonds were in consecutive numbers, and numbered somewhere between 4300 and 4200, as near as I can remember. These bonds were paid to me about Sept., 1865, by the Government at Washington. They were endorsed by Governor Houston in the year 1861, shortly before the meeting of the secession convention in Texas. I had information that the Secretary of the Treasury at Washington had published that the bonds had been suspended or would not be paid, and I gave that information to the State officers and to the members of the Texan legislature as I received it, just after the opening of the war. I was in Texas when Gov. Houston was deposed by the rebel authorities. He was deposed either by the legislature or the convention, I cannot tell which. He was the only State officer who was removed, and
239 he was removed on account of his loyalty to the United States.
He being removed, the lieut. governor became the governor, and the balance of the State officers remained unchanged. After this time Edward Clark, the said lieut. gov'r assumed to act and did act as governor during the remainder of Gov. Houston's term of office. At the expiration of that term, F. R. Lubbock, who was elected by the people of Texas during the rebellion, succeeded him as governor. At several times after I left Texas, I was offered these bonds unendorsed, but uniformly declined to buy them. They were offered to me in Monteray, Mexico, in the winter of 1863–'4, and afterwards, in 1866 or 1867, in New York. The bonds offered to me in New York were worth, at their face, with the coupons attached, about twelve hundred dollars in gold, and they were offered to me for eleven hundred dollars in currency. Currency at that time was considerably depreciated. The practice in Texas was uniform that these bonds should be endorsed by
240 the governor before they passed out of the treasury.

Cross-examined by J. W. Moore, esq., counsel for the defendant:

When I purchased these bonds, I was impressed with the belief that the Southern States would some of them seceed, but, from my personal acquaintance with Gov. Houston, and from his known opposition to secession, I felt assured that in no event would the State of Texas go out of the Union. I had the private and most positive assurances of Gov. Houston that he would use his utmost endeavors to prevent Texas from seceeding. I was aware at that time of the existence of a law in Texas setting aside two millions of the U. S. Texan indemnity bonds for school purposes, and also of other laws authorizing the use of said bonds for the promotion of railroad and other enterprizes for the
241 internal improvement of the State. The sole reason why I re-
fused to purchase the bonds offered to me in Monteray was because they had not been endorsed by a governor of the State of Texas prior to its secession. The information to which I referred in my direct examination as being received by me in Texas in regard to the non-redemption of these bonds came to me by a letter to me from a firm in this city. That letter, unless lost, is among my files of papers in

Austin. I have no recollection of ever having read any notice published by the Department in any newspaper that these bonds would not be paid. I came to this city to reside permanently in September, 1865, and these bonds were not offered to me in this city until 1866 or 1867. I refer to the bonds which, in my direct examination, I testified were offered to me in this city. I did not see these bonds myself, but I understood that they were not endorsed, which was the controlling 242 reason for my refusal to purchase. I was not aware at any time that the Department was redeeming any of these bonds unendorsed.

S. M. SEVERSON.

Sworn to before me this ninth day of September, 1869.

JAMES BETTS METCALF,
U. S. Commissioner.

Deposition of Edward Lambert for compl't.

In answer to interrogatories propounded by R. J. Brent, esq'r., of counsel for the complainant, Edward Lambert deposed and said:

I reside at No. 65 Remsen st., Brooklyn. I am doing business at No. 12 Wall street. Sometime in 1864, '5, or '6, I can't say which, I bought a small amount of Texan indemnity bonds, not to exceed $10,000. They were all redeemed by the Department at Washington in 243 gold coin, which passed through my hands. I made the purchase of the bonds contingent upon my making a profit upon them by their gold payment, as I was unwilling to take the risk otherwise. I was buying them on a currency basis and expecting to have them redeemed in gold. I think I made a profit of the gold premium at that time—I believe about thirty or forty per cent.

Cross-examined by J. W. Moore, esq'r, of counsel for the defendant:

I cannot name any owner direct from whom I obtained any of these bonds. Such as I did obtain, to the best of my recollection, were purchased by me after the close of the war. The bonds were b'ought to me by a party to negotiate. I cannot say whether the bonds were endorsed or not. I do not know Ex-Gov. Hamilton personally. I did not receive any bonds through him. I know of no special reason for 244 the creation of any doubt as to these bonds other than the general impression then prevailing that they would not be paid, inasmuch as the Department had been said to have refused to pay them. I was anxious to buy these bonds, and all I could get of them, because I believed I had personal influence enough at Washington to procure their redemption in gold. Up to that time I had never heard of the White and Chiles bonds. These bonds shared the doubt which hung over all Southern securities during the war. There were few of these bonds in the city. I never had but one transaction in them, and all I had were redeemed at one time. I never knew of any difference in value between different sets of Texan indemnity bonds, and I never heard the title to any of the bonds disputed, save that I heard that a certain number of them had been stolen, and payment refused on that account.

245 Re-direct examination by Mr. Brent, counsel for the complainant:

The bonds which I negotiated were brought to me by a broker named Wiswall; I believe his first name was Joseph. I do not know where he now is, or where he can be found; his name is not in the directory.

EDWARD LAMBERT.

Sworn to before me this 9th day of September, 1869.

JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. Y.

Deposition of John J. Cisco, for complainant.

In answer to interrogatories propounded by R. J. Brent, esq'r, of counsel for the complainant, John J. Cisco deposed and said:

246 I reside at No. 136 Fifth avenue, in the city of New York, and do business at No. 59 Wall street; I am banker; I have always been in business in New York. I remember having seen the announcement in the New York newspapers sometime during the late civil war, that certain U. S. Texan indemnity bonds had been taken possession of by the rebel authorities, and placed upon the market. During the war, Secretary Chase wrote me a letter of instructions in regard to the payment of the coupons of these bonds, directing me to refuse the payment of any coupons, save those which were attached to bonds bearing the endorsement of one of the loyal governors of Texas; that is, including Gov. Houston, and running back. That letter is, I suppose, on file in the office of the assistant treasurer here, which office I then filled. The letter was an official one. I caused notice to be given 247 through the newspapers and by a printed circular, of the instructions I had received. During the war, a lot of these bonds were presented to me for examination, with a view to the payment of the coupons by me as assistant treasurer of the United States. These bonds had been forwarded to this city by parties in Mexico. I communicated the fact that such bonds, unendorsed by any governor of Texas, had been presented to me, to the Department at Washington, and received instructions to hold the same, from Secretary Chase. I did so, and was sued. The Government defended me, and carried the action from court to court, until finally, it was decided that the parties claiming the bonds should recover their value and the value of the coupons in gold. I paid the judgment, amounting to about eighteen thousand dollars, and was re-imbursed by the Government. This action did not reach the Supreme Court of the United States.

Cross-examined by J. W. Moore, esq., of counsel for the defendants:

248 My term of office as assistant treasurer here expired in the fall of 1864. After I ceased to be assistant treasurer, I never had any dealings in these bonds. After that time I never saw any official announcement to the effect that these bonds would not be paid by the Department. I refer to the time subsequent to my resignation.

JOHN J. CISCO.

Sworn to before me this ninth day of September, A. D. 1869.

JAMES BETTS METCALF,
U. S. Commissioner.

Deposition of Charles H. Patterson, for complainant.

In answer to interrogatories propounded by James Betts Metcalf, at the joint request of the counsel for the respective parties hereto, 249 touching the introduction, in evidence, of certain copies of official correspondence hereto annexed, Charles H. Patterson deposed and said, viz:

I am deputy assistant treasurer of the United States, and have my office at the sub-treasury, in the city of New York. I have read the deposition of John J. Cisco, esq'r, in this cause, and have searched the official files of this office for letters from Washington, from the Treasury Department there to the sub-treasury here, in relation to the United States Texan indemnity bonds referred to in said deposition. Such letters as refer to such bonds in any way touching the issues in this cause, I have caused to be copied, and I now produce them. They are ten in number.

(Copies of said letters, received by the commissioner, and marked in the sequence of their dates, Exhibits A, B, C, D, E, F, G, H, I, and K, J. B. M., 2 |10, '69, and hereto annexed.)

The said exhibits were copied from the originals, now on file in
250 my office, by my express instructions for the purpose of being introduced in evidence, and they are, to the best of my belief, true and exact copies of said originals and of the whole of the same.

C. H. PATTERSON.

Sworn to before me this 2d day of October, 1869.

JAMES BETTS METCALF,
U. S. Commissioner, South. Dist. of N. Y.

Exhibit A., J. B. M.

TREASURY DEPARTMENT, *June 21st*, 1861.

SIR: It being understood here that a portion of the Texas indemnity bonds of which semi-annual interest coupons became due on the 1st July, prox., have been endorsed since that State has passed under
251 the control of insurgents, and that another portion remain in the treasury of that State, it has become the duty of this Department to stop the payment of the coupons of both these portions.

In order to distinguish them from such as have been taken from bonds heretofore negociated in good faith to innocent holders, you are hereby instructed to require all persons who shall present to you coupons of Texas indemnity stock for payment, to exhibit the bonds, with the coupons from which they were taken, together with the affidavits of the present holder, taken before competent authority, stating at what date and from whom the bonds in question were purchased by them. Should you be satisfied from the endorsement of the bond, and the tenor of such affidavit that the bonds became the lawful property of the holders of the coupons before the first day of January last, you will pay the coupons when due, filing the affidavits with them and transmitting it to the First Auditor, with the coupons, as an ad-
252 ditional voucher for such payment. But when the bonds appear to have been purchased since the 1st Jan'y, you will send the affidavits, within such remarks as you may think proper to make, and await further instructions before making any payment.

Very respectfully, your ob't serv't,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO,
Assistant Treasurer, New York.

Exhibit B, J. B. M.

UNITED STATES TREASURY, *July* 9, 1861.

SIR: I advised you by telegraph yesterday that you might pay the July coupons of the Texas indemnity bonds when no reason existed for

believing that they were negotiated by usurped authority in the
253 State, since the public and unwarranted exclusion of Governor Houston from office.

When bonds, in consequence of being held in Europe or from other circumstances, cannot, without great inconvenience, be submitted to your examination, you may pay the coupons without probation, if satisfied that they were in fact endorsed by Governor Houston, or one of his predecessors.

And you may also pay such coupons as may have been detached from their proper bonds, and may have subsequently come into the hands of innocent parties, without notice—even though the bonds, from which they have been detached, may be believed by you to have been negotiated without authority, and therefore to be void. It is not the purpose of the Department to authorize the recognition of the validity of bonds transferred otherwise than in accordance with law or the payment of coupons detached from such bonds by the holders of them. Such bonds and such coupons create no obligations against the United States
254 in favor of their holders; and this Department has no authority to make payments in the absence of obligation.

But on the other hand this Department desires to subject to no inconvenience whatever, not unavoidable, the bona fide holder of bonds legally transferred, or of the coupons of bonds illegally transferred, in the absence of any knowledge on the part of the holders of the coupons of such illegal transfer of the bonds.

I have the honor to be, with great respect, truly y'rs,

S. P. CHASE,
Sec'y of the Treasury.

J. J. CISCO, Esq.,
Ass't Treasurer, New York.

255 *Exhibit C, J. B. M.*

UNITED STATES TREASURY, *July* 29, 1861.

SIR: Your letter of the 27 inst., enclosing that of Messrs. Bramer & Co. to you, is received to-day.

That house has presented for payment, 87 coupons, from Texas indemnity bonds which are not produced for your examination; they are alledged to have been received from Texas, and the proceeds are to be applied to the payment of certain debts in Boston & Phil'd. It appears to have verbally stated to you by Mess. Bramer & Co., that these were endorsed by Gov. Houston. The high character of that house would entitle any statement made by them from their personal knowledge, to belief; and they do not profess to have any other information than the statement of the party who sent them the coupons, so far as I gather from your letter.

256 Unless the bonds from which the coupons were taken are produced, and they are shown, by the endorsement of Gov. Houston, to have been negotiated in good faith, before his expulsion by insurgents, these coupons clearly ought not to be paid by the United States.

The naked fact that these bonds are now held in Texas, affords a strong presumption against the propriety of buying them, which should be refuted by the production of the bonds for examination.

Very respectfully, your ob't s'v't,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO, Esq.,
Ass't Treasurer, New York.

257 *Exhibit D, J. B. M.*

TREASURY DEPARTMENT, *July* 15, 1862.

SIR: Your letter of the 12th inst. is received, stating what you have done in regard to the Texas indemnity bonds, of which coupons were presented to you for payment by Mess. Theodore Victor and Duckwith, and transmitting copy of your receipt to them upon their placing these bonds in your custody. Your course is approved. Should the long expected bonds appear, I will thank you to adopt similar measures in regard to them.

Very respectfully, your ob't s'v't.,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO, Esq.,
Ass't Treasurer, New York.

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258 *Exhibit E, J. B. M.*

UNITED STATES TREASURY, *July 21st*, 1862.

SIR: I am in receipt of your official letter No. 814, dated July 16th, stating that certain Texas indemnity bonds, referred to in your letter of the 12th inst., had been received by Mess. Theo. Victor and Duckwitz and that the senior partner declines to deliver them to you, in accordance with your understanding with the junior members of the firm, without such official guaranty as will hold them harmless in any action instituted by the correspondents in Mexico, who forwarded the bonds. Under these circumstances you ask my instructions.

I have also received a letter from Mess. Theo. Victor and Duckwitz, and one from their attorney, asking the return to them of the five bonds delivered by them to you, which you now hold.

259 It does not admit of doubt, in my judgment, that the bonds sent from Mexico to Messrs. Victor and Duckwitz, have been stolen and put into circulation without the consent or authority, legally expressed, of the State of Texas, to whom, as payee, they originally belonged; and the right of any officer into whose hands such stolen may come to stop it until proper investigation can be made, is equally clear.

You will, therefore, retain in your custody the five bonds already surrendered to you by Mess. Theo. Victor & Duckwitz, and should any claim be made upon you for them, the law officers of the United States will be instructed to resist it.

If Mess. Theo. Victor & Duckwitz still decline to place the four remaining in your hands, you will notify them in writing that they will
be held responsible for their custody and delivery to the proper
260 authority or to parties rightfully entitled to them. Should they,
on the other hand, choose to deliver these bonds to you, you will accept them, giving a receipt, as in the case of those now held by you. The absolute guaranty they ask, cannot be given.

With great respect,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO, Esq.

[Copy.]

Exhibit F, J. B. M.

TREASURY DEPARTMENT, *Aug.* 9, 1862.

SIR: Your several letters relating to the Texas indemnity bonds now held by Messrs. T. Victor & Duckwitz and Messrs. Echerderrier & Co., as well as those received by you from the former, have been duly received, and referred to the Solicitor of the Treasury, a copy of whose
report of the 8th inst. is herewith enclosed. I concur in the views
261 of that officer, and direct the retention of the bonds placed in your
hands by Messrs. T. Victor & Duckwitz. Should they bring action against you, as suggested, proper instructions will be given for your defence.

Very respectfully,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO, Esq.,
Ass't Treasurer, N. Y.

[Copy.]

Exhibit G, J. B. M.

TREASURY DEPARTMENT,
SOLICITOR'S OFFICE, *Aug. 8th*, 1862.

SIR: I have the honor herewith to return the several letters of the ass't treasurer of the United States at New York, in relation to certain
Texas indemnity-bonds, some of which he holds in his possession,
262 having received them from Victor & Duckwitz, and others of
which are in the hands of Messrs. Ehwenia & Co. Mr. Cisco has, in pursuance of instructions from you, declined to return to Victor & Duckwitz the bonds which he received from them, and they threaten to bring suit against him for their possession. He has also notified those parties and Ehwenia & Co. to deliver to him those in their possession, which they refuse to do, and he desires to be instructed as to what course he shall pursue.

It is evident that the parties claiming the possession of these bonds can have no title to them or right to their custody. They belong to the State of Texas, and can rightfully only be in the keeping of her officers. The presumption, therefore, is, that they have been stolen. The Government of the United States, being the debtor and having come into
possession of a portion of them, would be neglectful of its duty if
263 it surrendered them to any other than the proper authorities of
Texas, as thereby that State might be hind'red in the receipt of its dues upon them. I think it right, therefore, that Mr. Cisco shall retain the bonds in his possession; and, if an action be instituted against him, the district attorney of New York should be instructed to appear for the defendant.

As to the remaining bonds, I am of opinion that the Government has done all that good faith requires of it in requesting the persons having of them to deliver them to its officer. The only character in which, as I conceive, the bonds would be subject to seizure, would be as necessary evidence of a larceny, which it might be desirable to punish. No *possession* of the kind has been set on foot, and it may be regarded as questionable whether any will be instituted. Under the circumstances I deem it inexpedient that any compulsory proceedings be insti-

264 tuted to get possession of the bonds now held by the parties mentioned.

I ought, perhaps, to say that this communication has been delayed by the pressure of multifarious duties which have demanded my attention, and my having inadvertently overlooked the urgency of this particular case.

I have the honor to be, with high respect,

EDWARD JORDAN,
Solicitor.

S. P. CHASE,
Sec'y of the Treasury.

Exhibit H, J. B. M.

TREASURY DEPARTMENT, *Aug.* 15*th*, 1862.

SIR: Your letter of the 11th inst. has been received relative to the suit commenced against you by Messrs. Victor & Duckwitz.

265 The Solicitor of the Treasury has been directed to instruct the U. S. dist. att'y to defend said suit.

I am, very respectfully,

GEO. HARRINGTON,
Ass't Secretary of the Treasury.

JOHN J. CISCO, Esq.,
Ass't Treasurer, &c., New York.

Exhibit I, J. B. M.

UNITED STATES TREASURY, *April* 12, 1864.

SIR: I enclose to you a letter from Messrs. Lockwood & Co., of April 11th, proposing to sell five hundred thousand dollars of five per cent. bonds, payable after Dec. 31st, 1864, known as the Texas indemnity bonds, at 96 per cent., allowing accrued interest to the present
266 time. The bonds under the rule of the Dep't, *and* payable at maturity, in coin, if legally issued by the State of Texas, before secession. The question of such issue must be necessarily determined by the same rule which applies to the coupons of these bonds. The Department has authorized the payment of no coupons except of bonds endorsed by Sam. Houston, the last recognized governor of Texas. If the bonds held by the Messrs. Lockwood & Co. are so endorsed, I see no objection to their payment, and unless you perceive some which do not occur to me, you may accept their offers and make payments accordingly.

Yours truly,

S. P. CHASE,
Secretary of the Treasury.

JOHN J. CISCO, Esq.
Asst. Treas., New York.

K.

Exhibit K, J. B. M.

OFFICE OF LOCKWOOD & CO.,
NO. 22 WILLIAM STREET,
New York, April 11, 1864.

S. P. CHASE, *Washington.*

267 DEAR SIR: We have under our control about $400,000 of U.

S. five per cent. stock, due in 1865, which we would sell for *for* gold, at 96 per cent., you allowing us the accrued interest to the present time. There was a small sale of this loan to-day, at 163, which price is bid for it, and it is apparent to us that no considerable amount could be purchased except at a mere nominal discount from gold.

It is not necessary for us to say that this present is a handsome lot of the loan.

Very truly y'rs,

LOCKWOOD & CO.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James Betts Metcalf, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled 268 "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they are of the district in which said cause is to be tried, and more than one hundred miles therefrom.

I further certify that due notification of the time and place of taking the said depositions was given by the counsel for the complainant to the counsel for the defendants, to be present at the taking of the depositions, and to put interrogatories if he or they might think fit, 269 as was admitted to me by the said counsel for the defendants.

I further certify that, on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by the said counsel for the respective parties, and the said witnesses then examined; and, on the second day of October, in said year, I was attended by the witness' then examined, and all *all* of said witnesses were of sound mind and lawful age, and the witness' were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of mailing the same with my own hand in the U. S. P. O., in the city of New York, addressed to the court for which the same were taken.

270 And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this second day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JAMES BETTS METCALF,
United States Commissioner, duly appointed by the
Circuit Court of the United States for the Southern
District of New York, in the Second Circuit.

271

TESTIMONY FOR DEFENDANTS.

Deposition of James W. Throckmorton on behalf of defendants.

In pursuance of a commission issued to James Betts Metcalf, a U. S. commissioner of New York City, on the 6th day of August, 1869, he proceeded to take the following testimony:

In answer to questions propounded to him by Hon. James W. Moore, counsel for the defendant, James W. Throckmorton deposes and says:

Q. Are you the same Mr. Throckmorton who was once governor of the State of Texas; and if so, when were you such governor?

272 A. I am. I was elected in June, 1866, and inaugurated in August, 1866, and held the office for one year.

Q. How long have you been a citizen of the State of Texas?

A. Nearly twenty-nine years.

Q. Did you hold any office in Texas at the commencement of the late rebellion; and if so, what?

A. My term as a State senator had not expired when the war commenced, but expired in the following August.

Q. Did you favor or oppose the ordinance of secession?

A. I opposed it.

Q. Do you consider that you have a proper estimate of the sentiment of the people of Texas during the war in regard to the contest that was then going on between the North and the South?

A. I believe I have.

Q. Please state whether or not, after the adoption of the ordinance of secession, and the State of Texas had taken her place among the Confederate States, the public sentiment of the State   or was not strongly in favor of sustaining the State in that position.

A. I believe it was.

Q. Please state who were the members of the military board of Texas during the administration of the Hon. P. Murnah; and were you personally acquainted with them?

A. Pendleton Murnah, J. S. Holman, N. B. Pearce. I was personally acquainted with them all. Mr. P. Murnah, as governor of the State, was ex-officio president of that board.

Q. Was that military board constituted by an act of the legislature of Texas?

A. It was.

Q. Did you ever read the original bill in the Supreme Court of the United States, in which the State of Texas is complainant against George W. White, John Chiles, John A. Hardenburg, *Samuel* Wolf, George W. Stewart, The Branch of the Commercial Bank of Kentucky, Weston F. Birch, Bryon Murray, jr., and   Shaw? 273

A. I do not remember that I ever did.

Q. Please state whether or not, after the commencement of that suit, there was a compromise thereof effected between you, as the then governor of the State of Texas, and White and Chiles. If such a compromise was ever made, state whether or not it was reduced to writing; and if it was, please state, if within your knowledge, where that writing now is.

A. Benjamin H. Epperson was the agent appointed by me as the governor of the State of Texas, to prosecute that suit to recover certain Texan indemnity bonds, and my recollection is that Mr. Epperson informed me that a compromise had been effected with the parties to that suit, or some of them. Whether that compromise ex- 274 tended to all the parties, I do not remember.. My recollection is that Mr. Epperson informed me that that compromise was reduced to writing, and that the original was in his possession. I believe it now to be among his papers, at the town of Clarkson, in the State of Texas. I do not think I ever saw that original paper, nor do I recollect to have seen what purported to be a copy thereof.

Q. Have you any recollection that, as one of the results of that compromise, the State of Texas received some money; and if so, what amount?

275 A. I think the State received some money thro' Mr. Epperson, as such agent, as the result of that compromise. In making this statement, I desire to say that I do so entirely from memory, not having had occasion to consult any of my official papers since my removal from office, and the impression may have been derived from the fact that I was informed by Mr. Epperson, that he had received certain Texan indemnity bonds, or money, from Mr. White, as one of the results of that compromise.

Q. Please look at the paper now offered and state whether you recognize it as a correct extract from any document; and if so, what?

(Printed paper, marked Exhibit A, J. B. M., 6 | 8, '69, handed to witness, and introdued in evidence.)

A. This paper I recognize as an extract from and address issued by me, when I was removed from the office of the governor, to the people
276 of Texas, giving an account of my administration. I believe it to be correct as far as it goes. The statements therein made, were based upon the official information then in my possession. That portion of the statement which says, "subsequent to the institution of the suit, a compromise was effected with Messrs. White & Chiles," may have been made in general terms, as alluding to the parties to the suit, or it may have been made with particular reference to White and Chiles as the identical parties with whom the compromise was made.

Q. State whether to your knowledge, the original paper containing the compromise was ever put on file, in the State department of Texas?

A. I do not think it ever was. I am quite certain that it was not during my administration. I desire to state in addition, that I cannot be more explicit in my statements in regard to this matter from the fact of the length of time which has transpired since these occurrences
277 took place, from the fact that I have not now access to either my official or private papers to refresh my memory, and from the fact that I have not had occasion to refer to them in this regard since my removal from office.

Q. State whether or not whatever Mr. Epperson did in this matter was done by him under your authority as governor of Texas?

A. Mr. Epperson was appointed by me as governor of the State, to be the agent of the State of Texas in this matter, and so acted.

Cross-examination, by George W. Paschal, jr., esq., counsel for the State of Texas.

Q. Did Mr. Epperson, as agent, have discretionary power in this matter?

A. I think he did.

Q. Did the compromise of which you have spoken effect the release of Mess. White and Chiles, or their securities?

A. I do not remember the extent to which that compromise went.

278 Q. Did you ever authorize Mr. Epperson to do any act which should release Mess. White and Chiles from their accountability to the State of Texas for these bonds?

A. My recollection is that Mr. Epperson had full power to do anything which he thought the interests of the State of Texas required.

Q. Was it your intention to authorize the release of the title of the State of Texas to these bonds?

A. My intention was to confer upon Mr. Epperson all the power conferred upon me by the law of the State of Texas, to recover these bonds or their proceeds, and to take such steps to effect that purpose as his judgment dictated was best.

Q. Was not your action in so doing, in pursuance of authority conferred upon as governor by an act of the legislature of the State of Texas, approved October 30, 1866?

A. It was.

279 Q. Was not your action in appointing Mr. Epperson agent, taken with a view to recover these bonds or their proceeds?

A. It was.

Q. Where is the act of Oct. 30th, 1866, to which you above refer, to be found?

A. In the volume of the general laws of State of the Texas, (published by authority,) of the eleventh legislature of that State—chapter 71, page 69.

Q. Did you have any intention of surrendering the title of the State of Texas to these bonds without an adequate consideration in the compromise?

A. I had full and implicit confidence in the ability and integrity of Mr. Epperson, and intended to confer upon him all the power conferred upon me by the act of the legislature above referred to, and intended him to take just such steps as the law authorized me to take to secure and protect the interests of the State. My construction of the law was,
that it fully authorized suits to be instituted or compromises to
280 be effected that would secure the whole amount, or any portion,
of the bonds or their proceeds.

Q. Did you not know that these bonds had been dedicated to the school fund of Texas?

A. By an act of the legislature long anterior to the war, a sum of two million of dollars of these bonds was set aside for the school fund. This was the act of 31 of January, 1854.

Q. Did you not know that by an act of the legislature of Texas these bonds were not negotiable without the endorsement of the governor of the State, and that before the war, prior to the 1st of March 1861, none had been negotiated without such endorsement?

A. My recollection is that such was the law, and I presume that, prior to that time, none were negotiated without such endorsement.

Re-direct examination:

281 Q. You have been asked if it were your intention to authorize Mr. Epperson by any act of his, to release White and Chiles from their liability to the State of Texas; please state if, in the exercise of the authority conferred upon him by you, he made a compromise with White and Chiles, the legal effect of which was to release White and Chiles, or any other parties to the suit, from their liability, whether it did not carry out your original intention and purpose when you conferred the authority upon him?

A. I believe that I have answered this question fully already. I intended to confer upon M'. Epperson just the power and authority I have stated; and whatever he did *on* the premises was in pursuance of the original intention with which I conferred the authority upon him.

Q. Did you at any time while governor of the State of Texas repudiate, in your official capacity, this compromise which Mr. Epperson made?

J. W. THROCKMORTON.

282 Subscribed and sworn to before me, this sixth day of August, 1869.

JAMES BETTS METCALF,
United States Commissioner, South. Dist. of N. Y.

Examination in this cause adjourned until eleven o'clock to-morrow morning, (July 7th, 1869,) when Mr. Epperson will take the stand.

J. B. M.

Exhibit A, J. B. M., 6 | 8, '69.

Extract from a "Statement from books of comptroller's office, showing amounts and kinds of funds received and deposited to credit of State revenue account, from August 14th to December 31st, 1866, and from January 1st to July 31st, 1867, inclusive:

6. The 151 bonds in the hands of Droege & Co., have not been
283 secured. There are many controversies growing out of the different transactions by which said firm got possession of said bonds. Besides the 151 bonds held by Droege & Co., there is a sum of money in the hands of Lloyd, Entwistle & Co., of London, England, say £15,418 12 4, in specie, with interest thereon from 25th December, 1862. This sum depends on the result of negotiations with Droege & Co. Mr. Epperson, as also the attorney general, have bestowed much labor on these controversies and have about succeeded in preparing them for settlement; the delay being now caused by the non-arrival of vouchers and authority to Messrs. Ballingers & Jack, of Galveston, the agents of Messrs. Droege & Co. With a little time at my command, I feel sure the 151 bonds and a large portion of the money could be realized for the State.

7. There was a transaction between the military board and Messrs. White & Chiles, whereby the latter came into possession of 135 bonds, with coupons sufficient to make about $156,000. A bond was
284 given, whereby the obligors bound themselves to pay the State the sum of $156,000 in Texas State bonds or treasury warrants, in the event they failed to import for the use of the military board, certain articles of necessity, specified in schedules between the parties. The bonds and coupons were taken by Messrs. White & Chiles, and a total failure made to introduce the articles. Efforts were made by Governor Hamilton to have settlement with Messrs. White & Chiles, but without success. These bonds had been disposed of by them to various parties, and at the time of my going into office, were being paid at the U. S. Treasury. Protests were filed against the payment, but being notified that the State must take affirmative action, or the protest would be disregarded, I advised with the attorney general, and he at once went to Washington to confer with Mr. Epperson, and take every possible step to protect the interest of the State. Having filed new protests, in connection with Mr. Epperson, against the payment of
285 all the Texas indemnity bonds, he found they would be paid, notwithstanding. After consultation with eminent counsel, it was deemed advisable to institute suit by injunction against the Secretary of the Treasury and all the parties who had any of the White & Chiles

bonds. The suit was instituted, giving as fee to counsel one-fourth the amount recovered, and nothing if they failed. To this suit Messrs. White & Chiles were made defendants. I had to deposit about $250 under the rules of court, to secure costs in the case. Subsequent to the institution of the suit a compromise was effected with Messrs. White & Chiles, whereby the State secured $12,000 in currency and eight of the U. S. bonds (on file with the Treasury,) for $1,000, specie, each, and the release of Messrs. White & Chiles on 75 of the bonds held in England by Droege & Co. In consideration for the money, bonds, and release, above mentioned, the State released all claim on Messrs. White & Chiles and their securities on the bond specified for $156,000. There 286 were about 51 bonds at the date of the institution of the suit, (which had passed from the hands of Messrs. White & Chiles to third parties, and which had not been paid at the Treasury,) which was not affected by the compromise with these gentlemen, and depend on the result of the suit. Since the commencement of the suit the Secretary of the Treasury, not regarding the protests of the State, nor the pendency of litigation, caused 34 of the bonds to be paid: they, with the coupons attached, amounting to about $37,250. The payment of the bonds, at the time and under the circumstances, was unexpected and unjust to the State."

EXECUTIVE OFFICE,
Austin, Texas, Sept. 9th, 1868.

I certify that the above and foregoing is a true extract from the "Executive Records, 1866 and 1867," dated "Executive Department, Austin, Texas, August 8th, 1867," and signed "J. W. Throckmorton, governor of Texas."

THAD. MCRAE,
Private Secretary.

287 *Deposition of Benjamin H. Epperson for defendants.*

In answer to interrogatories propounded to him by the Hon. James W. Moore, of counsel for the defendants, Benjamin H. Epperson deposes and says, viz:

Q. Please state your place of residence, and how long you have resided there?

A. Clarksville, Red River County, Texas, and I have resided there about twenty-three years.

Q. State if you are the same Epperson whose name appears upon the record of the Supreme Court of the United States in the suit, The State of Texas against White & Chiles and others, as agent of the State of Texas?

A. I am that one.

Q. By whom were you appointed such agent, and what was the extent of your authority in relation to certain Texan indemnity bonds?

288 A. I was appointed by Governor Throckmorton, with authority to institute suits to protect the interest of Texas, with reference to the bonds referred to, and to arrange with the parties holding the same for compromise, according to the best judgment I possessed.

Q. Did you cause the suit above referred to, to be instituted in the Supreme Court of the United States?

A. I did.

Q. After the institution of that suit, did you effect a compromise with any of the parties with regard to those bonds? If so, please state with whom; was the compromise in writing; and where is that writing?

A. I made an arrangement with White, representing White & Chiles, with reference to certain Texan indemnity bonds, but none of those
bonds were included in the suit then pending in the Supreme
289 Court, and above referred to, that is to say, as I remember the
contract. That contract was in writing, and signed, I think, in duplicate, one of which was retained by Mr. White, and the other of which I retained, myself. My copy of the contract now is, I believe, among my papers at Clarksville, Texas.

Q. According to your recollection of the terms of said contract, what was the extent to which it released White and Chiles from liability on account of said Texan indemnity bonds?

A. My recollection is that the contract did not release them from any liability on account of the bonds, concerning which the suit above referred to was instituted; when I say "the contract did not release them," I mean that it was not my intention that it should.

Q. Please state whether or not, by the terms of that contract, anything was said about the bonds which were understood to be in the
possession of Droege & Co., in England?

290 A. The contract did refer to these bonds, and White and Chiles
thereby released any claim which they might have to about seventy-five thousand dollars' worth of those bonds in the hands of Drego & Co.

Q. Did you, as the result of the compromise, receive for the State of Texas any sum or sums of money; and if so, state how much.

A. By an arrangement made with another party who held a number of bonds purchased from or procured from White & Chiles, the State of Texas received twelve thousand dollars, upon withdrawing all obligations to the payment of the bonds held by that party.

Q. Do you remember the name of "that party?"

A. I am not sure, but I think it was Douglass.

Q. Was that money or any part of it paid into the State of Texas, or its treasury?

A. I deposited that money with Severson, Perkins & Co., of the city of New York, to the credit of the then governor of Texas, who was Gov. Throckmorton.

Q. Where did this negotiation and compromise take place?

291 A. At Washington City.

Q. Have you taken any steps towards procuring the contract referred to, which you have testified was among your papers at your home in Clarksville, Texas.

A. I have written to have that contract, and all papers touching these transactions, sent to me here, and I expect to receive them. When I do so, I can testify positively as to matters concerning which I now have to rely upon my memory alone, which is very vague as to the precise terms of the contract, as many propositions were discussed during our negotiations, and I am confused in my recollection as to which one was embodied in the contract. The contract was drawn by either R. T. Merrick or G. Taylor, esq's, (the attorneys for the State of Texas,) and was signed by me as agent for that State. When I receive my papers I will, if requested, cheerfully tell all I know concerning these transactions.

292 Q. Was that contract of compromise ever filed with the State
of Texas, or in its State department.

A. I think it was not.

Q. Did you communicate to the governor the fact that the compromise had been effected; if so, how soon after it was made?

A. I think I did immediately.

Q. While he was acting as governor, and you as agent, did he at any time disapprove what you had done in the premises?

A. Not to my knowledge.

Q. Do you remember whether or not twelve thousand dollars was all the money you received, as the result of that compromise?

A. That was all the money; but there were other considerations.
The release of White & Chiles' claim upon the seventy-five thousand
dollars of bonds held by Droege & Co., in England, was a promi-
293 nent consideration; the equivelent of which was the release of
the sureties of White and Chiles, on their bond.

Q. Did any other person except yourself receive any money as the result of that compromise?

A. In addition to what I received there was the sum of four thousand dollars paid to the attorneys of the State of Texas, as their fee. The attorneys were Mess. Brent, Merrick, and Taylor. I received none of that. The sum of sixteen thousand dollars was all the money that was paid, altho' eight thousand dollars more were to have been paid, and were not paid.

Q. In what were the other eight thousand dollars to have been paid?

A. By the filing of such release of White and Chiles to eight bonds
which had been deposited in the Treasury Department by Birch,
294 Murray & Co., claimed to be the property of White and Chiles,
as would enable the State of Texas to receive that money.

Q. How many persons besides Mr. George W. White, took part in the negotiation with you?

A. No one except Mr. Douglass, who seemed to be under Mr. White's control, and held the bonds out of which the money was paid, and claimed to own them—Mr. White disclaiming the ownership of any bonds whatever which were in the possession of Douglass.

Cross-examination, by George W. Paschal, jr., esq., of counsel for the complainant:

Q. Please state what you understood to be the nature of the contract of compromise of which you have spoken, and what was intended to have
been effected by it?

295 A. I did not intend to release White and Chiles, but only in-
tended to release their sureties upon their bond to the State of
Texas.

Re-direct examination:

Q. If the written contract, when produced, shows that White and Chiles were released from liability, as well as their sureties, will you not then be satisfied that your present recollection of the contract in that in that respect is not correct?

A. I think the written contract will show what the understanding between the parties then was.

B. H. EPPERSON.

Subscribed & sworn to before me this 7th day of August, 1869.

JAMES BETTS METCALF,
United States Commissioner.

296 In the supreme court of the Dist. of Columbia.

THE STATE OF TEXAS
vs.
THE FIRST NATIONAL BANK OF WASHINGTON
et al.

The complainant will take notice that, on Friday, the 6th day of August, 1869, at the office of James Betts Metcalf, 218, city of New York, Broadway street, we will proceed to take the deposition of Ex-Gov. Throckmorton and Benjamin H. Epperson to be used and read in behalf of the def'ts on the trial of the equity and common law suits now pending and undetermined in said court, at which time and place you can attend if you choose.

W. S. HUNTINGTON,
For himself and as cashier of the First National Bank.

297 It is agreed that the evidence may be taken at the time and place. And we agree that the time for taking depositions is hereby enlarged one month.

5th Aug., 1869.

GEO. W. PASCHAL,
Sol. for Compl't.
J. W. MOORE,
Counsel for Def'ts.

298 *Testimony of defendants.—Filed Jan.* 5, 1871.

In the Supreme court of the District of Columbia.

STATE OF TEXAS
vs.
WHITE & CHILES AND FIRST NATIONAL BANK. } Eq. No.

Testimony of William E. Chandler for the defendants.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this 3d day of June, 1870, personally came William E. Chandler, the witness within named, and after having been duly sworn to tell the truth, the whole truth, and nothing but the truth, the matters contained in the within deposition were written down by me, and then read by me to the witness, who then subscribed the deposition in my presence.

J. J. JOHNSON,
Examiner in Chancery.

The adverse party was represented by Thomas J. Durant, esq.

299 WILLIAM E. CHANDLER, being duly sworn deposes and says: My name is William E. Chandler.

Q. Please state whether you had any official connection with the Treasury Department of the United States, and if you had, state what it was, when did you commence your official relations, and who was Secretary of the Treasury at that time?

A. I was Assistant Secretary of the Treasury from June, 1865, to the last of November, 1867, under Hugh McCulloug*h*, Secretary.

Q. Please state what knowledge, if any, you had during your official relations with the Treasury Department, of what are known as Texas indemnity bonds generally, and particularly of the bonds in controversy in this suit; the circumstances under which they were redeemed by the Treasury Department, and under which they were purchased by William S. Huntington, cashier of the First National Bank?

300 A. Under the direction of the Secretary, I had charge, as Assistant Secretary, of the loan-room, as called, connected with the Secretary' office, where the business of the Secretary, in connection with loans, was transacted, and I decided, or aided in the decision of questions arising in connection with redemption of loans, and signed or checked the correspondence of the Department relative thereto. Shortly after taking charge of the loan-room, I had occasion to learn the action of the Department in reference to the loan known as the Texas indemnity bonds. Such bonds were presented for payment, and request of payment of bonds not actually presented were made. Payments were refused, and the reasons given therefor to holders, were substantially these: That it had been decided by Mr. McCullo*ug*h's predecessor, that the Texas indemnity bonds should not be paid, except when endorsed by some governor of the State of Texas, prior to the rebellion. 301 The war being over, in the spring and summer of 1865, the question as to the payment of these bonds, as they re-appeared, after the close of the war, became so urgent that it was taken into consideration by the First Comptroller of the Treasury, at the request of the Secretary, prior to August 15th, 1865, and on that date he furnished the Secretary with his opinion, which has been printed, recommending the payment of Texan indemnity bonds, to holders who received the same in good faith, although without the endorsement of any governor of Texas. In accordance with this opinion, the Department commenced the redemption of Texan indemnity bonds, and payments were made, I think, as rapidly as the cases which had accumulated could be examined, until notice reached the Department of the discovery of the White and Chiles transactions, when there was again a temporary suspension of the redemption of bonds, which it was suggested might have passed through 302 their hand'. The Department made efforts to ascertain, if possible, the description of the bonds which had passed into the hands of White and Chiles; tried to ascertain the numbers of these particular bonds, and made all such efforts as seemed practicable to protect any interest which the State of Texas might have in the premises. It was, I think, found impossible to determine what particular bonds were involved in the White and Chiles transactions, their numbers could not be ascertained, and, after some delay, the Department proceeded with the redemption of the Texan indemnity bonds as before, under the Comptroller's opinion. The Comptroller in each particular case examining the bonds, and recommending their payment. In September, 1865, the question had arisen in the Department as to the rights of a purchaser of what was known as the seven-thirty bonds, where the same had been 303–4 stolen from the actual owner, and had been taken by the purchaser in good faith and for value after they were due. That question had been submitted to the Attorney General, and, September 4, 1865, he had given the Secretary his opinion, (published in vol. ii, page 332, Attorney General's Opinions,) that the doctrine of notice as applicable to negotiable paper, and allowing all equities in favor of the maker of the paper to be set up against the party taking the paper when overdue, did not apply to the purchase of Government securities payable in blank or to bearer, and purchased by the holder after the

time fixed upon the face of the securities for their payment, and that, therefore, the stolen seven-thirty notes ought to be paid to the bona-fide holder.

Under this opinion of the Attorney General, several hundred millions of seven-thirty notes were redeemed, the rule there stated being applied
whenever a case called for it, and under this opinion, and the
305 opinion of Comptroller Tayler, the redemption of the Texan in-
demnity bonds was continued as already stated. This is all that now occurs to me relative to the general subject of the Texan indemnity bonds, although more particular points might occur to me upon reflection. With reference to the Texan indemnity bonds purchased by the First National Bank, I remember conversations by Mr. Huntington with me on the subject of such bonds. Mr. Huntington made occasional inquiries with reference to these indemnity bonds, and was informed by me from time to time as to the condition of the question at the Department. He was, I think, informed of the opinion of the Comptroller, in August, 1865, and of the determintion of the Department to act thereon. He was also, I have no doubt, informed of the discovery of the White and
Chiles transactions, and of the determination of the Department
306 to delay the redemption of the bonds long enough to ascertain
whether it were possible for the Department to do anything to protect the interest of the State of Texas in those bonds. I remember that he inquired of me whether or not the Department could give any information as to the numbers or particular description of the White and Chiles bonds, and, after conferring with the Comptroller and endeavoring to ascertain the numbers, I informed him that it was impossible for the Department to give any information relative to the description or numbers of the White and Chiles bonds. I think he made this inquiry about the time of the redemption of some bonds through his bank in favor of F. P. Stanton, and possibly at other times. He was informed by me of the decision of the Department to proceed with the redemption of the Texan indemnity bonds. This is my general knowl-
edge relative to the bonds purchased by the First National Bank.
307 The bonds were redeemed from time to time, but the particular
circumstances I do not at this moment recall. I desire to state further that, prior to each decision of Mr. McCullough to proceed with the redemption of these Texan indemnity bonds, I personally took strong grounds against their payment. In the first instance, I took the position that no bond ought to be paid that ever passed through the hands of a rebel, and after the discovery of the White and Chiles transactions I was very earnest in my efforts to protest, if possible, the rights of the State of Texas, which had been plundered by rebel agents, but when my opinions were overruled by my superior officers, I of course acquies'ed in their decisions and carried out their instructions in good faith, and freely informed Mr. Huntington, and all others who made inquiries, that the Texan indemnity bonds would be redeemed in favor of loyal holders.

308 Q. Had Mr. Huntington any means of knowing, or did he know,
so far as you are informed, whether or not any of the bonds presented by him were of the class called the White and Chiles bonds?

A. So far as I know he did not know that they were White and Chiles bonds, and so far as I am aware he had no means of knowing. My answers to inquires were uniformly that the Department could not distinguish White and Chiles bonds from other outstanding bonds.

Cross-examination waived by Mr. Durant, for the State of Texas.

W'M E. CHANDLER.

Sworn to and subscribed before me this 3rd day of June, 1870.

J. J. JOHNSON,
Examiner in Chancery.

309 *Order for hearing.—Filed Dec.* 23, 1869.

STATE OF TEXAS
vs.
WHITE, CHILES, ET AL. } 1280. Equity dock. 9.

Upon motion of R. T. Merrick., esq., solicitor for plaintiff, the above cause is set down for hearing, and placed on January calendar, 1869.

By the clerk.

Plea of Jno. Chiles.—Filed Feb. 28, 1870.

THE STATE OF TEXAS
vs.
WHITE, CHILES, ET AL. } 1280. Equity.

The separate plea of Jno. Chiles to the bill of complaint of the State of Texas, exhibited herein against him, the said John Chiles, together with Hugh McCulloch, Geo. W. White, et al.

This defendant, by protestation, not confessing any of the matters in said bill alleged to be true in manner and form as the same
310 are therein set forth, doth plead thereunto, and for cause of plea, says that, heretofore, and before said complainant exhibited the present bill in this honorable court, to wit, on the fifteenth day of February, 1867, the said complainant did exhibit its bill of complaint in the Supreme Court of the United States against this defendant and others, for the same matter and to the same effect, so far as this defendant is concerned, and for the like relief, as the said complainant doth now, by its present bill demand and set forth; to which said first bill, this defendant did put in his separate answer and supplemental answer, and the said complainant did thereunto reply, and other proceedings were thereupon had, and therein the said complainant did, by the consideration and judgment of the said Supreme Court of the United States, obtain and receive a final decree in favor of said complainant and against this defendant, which said decree is now remaining in full force and operation; and therefore the said defendant doth
311 plead the said former bill, answers, and proceedings and decree, in bar to the present bill, and humbly prays the judgment of this honorable court, whether it behooves him to make any other or further answer thereto as aforesaid. And prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN CHILES.

JAMES HUGHES,
Sol'r & Counsel.

DISTRICT OF COLUMBIA,
Washington County, ss:

John Chiles, being duly sworn, states on oath, that the foregoing plea, by him subscribed, is true in fact, and that the same is not interposed for delay.

JOHN CHILES.

Subscribed & sworn to before me this 28th of Feb'y 1870.

R. J. MEIGS, *Clerk.*

I, James Hughes, counsel for John Chiles, certify that, in my opinion, the foregoing plea is well founded in law. Feb. 28, 1870.

JAMES HUGHES,
Counsel for Jno. Chiles.

312 *Motion of def't Chiles to dismiss bill.—Filed March* 1, 1870.

THE STATE OF TEXAS
vs. } 1280. Equity.
JOHN CHILES & OTHERS.

The defendant John Chiles, by James Hughes, his counsel, moves that the complainant's bill herein be dismissed for the following reasons:

1st. There is not and has not been at any time since the institution of the suit, or before the same, at any period since the making of the contract set up in the bill between the State of Texas and White and Chiles, any State government in and for the State of Texas, other than a provisional government, and no government which could sue or authorize a suit in any of the courts of the United States or in this court.

2d. The complainant was not, at the time of the institution of this
suit, and is not now a State, recognized by the Constitution and
313 laws of the United States, having power to sue in this court.

3d. The bill does not set forth and show competent authority to bring and prosecute this suit.

4th. The bill is defective for want of parties in this, that the United States is not a party thereto.

5th. The United States is a necessary party to said bill, being a party in interest, and said United States not having consented to be sued the bill does not lie, and cannot be maintained.

6th. There is not a case stated in said bill, which, in equity, can be maintained.

JAMES HUGHES,
Counsel for Jno. Chiles.

Order certifying cause to general term.—Filed March 1, 1870.

STATE OF TEXAS
vs. } 1280. Equity docket 9.
CHILES & WHITE ET AL.

It is, this 1st day of March, 1870, ordered that the above-entitled cause be certified to the general term, to be heard in the first instance.

ANDREW WYLIE, *Justice.*

314 *Motion for leave to withdraw plea and file demurrer.—Filed March* 12, 1870.

THE STATE OF TEXAS
vs. } 1280. Eq. dock. 9.
WHITE & CHILES ET AL.

The defendant Chiles moves for leave to withdraw his plea herein, and to file a demurrer to the bill of complaint.

JAMES HUGHES,
Counsel for Jno. Chiles.

Order allowing def't Chiles to withdraw plea and file demurrer.—Filed.

STATE OF TEXAS
vs.
WHITE & CHILES ET AL. } 1280. Equity dock. 9.

On motion of John Chiles, one of the defendants, by his solicitor, Mr. Hughes, leave is granted him to withdraw his plea herein, and to file a demurrer to the bill of complaint.

314½ *Demurrer.—Filed March* 12, 1870.

THE STATE OF TEXAS
vs.
JOHN CHILES ET AL. } 1280. Equity docket 9.

The demurrer of John Chiles, one of the defendants to the original bill herein exhibited against him, the said John Chiles, with others.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for causes of demurrer showeth that:

1st. That the said complainant hath not, as appears by the said bill, made out any title to the relief thereby prayed.

2d. That the said complainant hath not, in and by his said bill, made or stated such a case as ought or doth entitle him, to any such discovery or relief, as is thereby sought and prayed for, from or against the defendant.

315 3d. That it appears by the said complainant's bill that the United States of America is a necessary party to said bill, but the said complainant hath not made the said United States a party to the said bill; and inasmuch as the said United States cannot be sued without their consent, and no such assent is averred or alleged, and justice cannot be done in the premises without, the said bill doth not lie and cannot be maintained.

And therefore, and for other good causes of demurrer in the said bill contained, this defendant doth demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, or any of the matters and things therein contained. And prays to be hence dismissed with his reasonable costs in this behalf sustained.

JOHN CHILES.

JAMES HUGHES,
Solicitor & Counsel.

I, James Hughes, counsel for John Chiles, in the above-entitled cause, do certify that, in my opinion, the foregoing demurrer is well founded in law.

316 DISTRICT OF COLUMBIA,
County of Washington, ss:

John Chiles, being duly sworn, doth depose and say, that the foregoing demurrer is not interposed for delay.

JOHN CHILES.

Subscribed & sworn to before me this 12th of March, 1870.

R. J. MEIGS, *Clerk.*

Motion to dismiss bill as to White and Chiles.—Filed April 28, 1870.

STATE OF TEXAS
vs.
WHITE, CHILES, & OTHERS. } 1280. Equity docket 9.

The above complainant comes into court here, by its solicitors, and moves the court to dismiss so much of the bill of complaint filed in this case as makes Geo. W. White & John Chiles defendants, because, it appearing by the evidence returned in this cause that they have no interest in the bonds set forth in the pleadings.

317

THO'S J. DURANT,
R. T. MERRICK,
GEO. W. PASCHAL,
R. J. BRENT,
Solicitors and Counsel.

On the aforegoing motion, ordered that the bill of complaint be dismissed as to said White & Chiles.

By the court.

Motion and stipulation to amend bill.—Filed Sept. 26, 1870.

THE STATE OF TEXAS
vs.
GEORGE W. WHITE ET AL. } 1280. Equity docket 9.

Please to take notice that, on the fourth Monday of September, 1870, at the opening of the court, or as soon thereafter as the same can be heard, the counsel of plaintiff will ask leave to amend their bill in the following particulars, to wit:

First. On page three, and in line thirty-three, before the word "one," insert "from," and after the words "thirty-five" insert "to one hundred and sixty-two;" on same page, in line thirty-eight, strike out 318 words "more fully;" on same page, in line forty-one, continue paragraph by adding as follows, "and at said date, or thereabouts, did also dispose of other of said bonds so seized as aforesaid, in further execution of said purpose."

Second. On page four, in line twenty, after the word "Chiles," insert "and so disposed of to other parties." In line twenty-four, same page, after the word "them," insert "or the parties to whom the same were delivered by the said board."

Third. After the fourteenth line, on the fifth page, insert the following words, to wit: "And the plaintiff, The State of Texas, avers and charges that, by reason of the non-indorsement of the said bonds, numbered from 4960 to 4963, inclusive, by any governor of the State of Texas, no legal title to the same could be divested out of the complainant or passed to the parties to whom they were delivered, whether the said bonds passed to the defendant under the aforesaid contract with White & Chiles, or in any other way."

Fourth. After the number 4963, in the twenty-ninth line of the fourth page, add the word and figures, "number 4228."

319 Fifth. In the first line of seventh page, after the word "bonds," insert the words and figures following, to wit, "including the aforesaid bonds, numbered from 4960 to 4963, inclusive."

THO'S J. DURANT,
R. T. MERRICK,
GEO. TAYLOR,
Of Counsel for Complainant.

The complainant, by its solicitors, moves for leave to withdraw its replication and amend the bill in the particulars above set forth.

R. T. MERRICK, *For Compl't.*

It is agreed, this 8th October, 1870, that the complainant's bill be regarded as amended in the aforegoing particulars, and that the same be treated as duly inserted in said bill.

THO'S J. DURANT, *For Pl'ff.*
J. W. MOORE, *For Def'ts.*

320 *Answer of def'ts Huntington and 1st National Bank to amended bill.—Filed Jan'y* 1, 1871.

THE STATE OF TEXAS
vs.
GEORGE W. WHITE ET AL.
} 1280. Equity docket 9.

1. The def'ts, The First National Bank and William S. Huntington, its cashier, for answer to complainant's bill, as amended, say:

They admit that none of the Texas indemnity bonds which came to their hands were endorsed by any governor of Texas.

2. They deny that because they were not thus endorsed that no title thereto could pass to an innocent purchaser for value.

3. They deny that they had any notice that such endorsement was necessary in order to confer title to them to a purchaser, but, on the contrary, they had notice that no such indorsement was required or necessary, and this notice they received from the Treasury Department by a decision made by it and by the notorious fact that said Department had redeemed thousands of dollars of such bonds without any indorsement of any governor of Texas.

321 4. They deny that any liability can rightfully rest on them by reason of the non-indorsement of any of the bonds in controversy, but, on the contrary, aver that if any liability rests upon any one, it should be on the United States, who, through their Treasury Department, paid off and redeemed the bonds without indorsement, and advised the def'ts that they were safe in purchasing said bonds, and that the complainant should be compelled to look to the United States for any remedy they may claim, and not to these defendants.

5. The def'ts further state that they have, in their original answer, truly set forth a list of all the Texas indemnity bonds to their hands.

6. They have no personal knowledge that any of the bonds which came to their hands, came through White & Chiles by any contract, or otherwise; cannot admit the same, and require proof the charge.

7. They deny the right of the complainant to rely on the amended bill because the said State of Texas was not one of the States of the United States, possessing such statutes as enabled it to sue as such, at the time of the commencement of this suit, and cannot cure that fatal defect and give this court jurisdiction of the case by the amendment.

322 8. Again, they deny each and every allegation in complainant's original bill as amended, not herein admitted, and pray, as in their original answer, to be hence dismissed with their costs.

MOORE & BRIGHT,
For Def'ts.

W'm S. Huntington, cashier of the First National Bank of Washington, def't in the above-styled suit, says that the facts set forth in the foregoing answer are true, so far as related from his own personal knowledge, and so far as given from the information of others, he believes to be true.

W. S. HUNTINGTON,
Cashier.

Sworn to and subscribed to before me this fourth day of January, 1871.

[SEAL.]

N. CALLAN,
Notary Public.

323 *General replication.—Filed Jan.* 14, 1871.

THE STATE OF TEXAS, PL'FF,
vs.
WHITE, CHILES, & AL., DEF'TS.
} 1280. Equity dock. 9.

The plaintiff joins issue with the answer of the defendant.

THOMAS J. DURANT,
R. T. MERRICK,
Sol. & of Counsel for Pl'ff.

Proceedings before the supreme court of the District of Columbia, in general term—present, Chief Justice Cartter, and justices Olin, Wylie, and MacArthur—commencing Tuesday, January 3d, 1871.

TUESDAY, *January 17th*, 1871.

Session resumed pursuant to adjournment—present, Chief Justice Cartter, and justices Olin and Wylie.

324 *Decree in general term.—Filed Jan.* 17, 1871.

In the supreme court of the District of Columbia.

THE STATE OF TEXAS, PL'FF,
vs.
GEORGE W. WHITE, JOHN CHILES, HUGH McCulloch, Robert W. Tayler, William S. Huntington, and The First National Bank of Washington, def'ts.
} 1280. Equity docket 9.

This cause coming on to be heard at the present term of the court in general term, and being argued by counsel thereupon, upon consideration thereof, it is, this 17th day of January, 1871, ordered, adjudged, and decreed as follows, viz:

1st. That the defendants The First National Bank of Washington, within ten days from the date of this decree, pay to the plaintiff The

State of Texas the sum of twenty-one thousand and seventy-five dollars ($21,075) in gold coin, with interest thereon from the 27th day of February, 1867, at the rate of six per cent. per annum, the
325 said sum of $21,075 being the amount of nineteen (19) bonds, known as Texan indemnity bonds, numbered 4226, 4227, 4229, 4703, 4705, 4706, 4748, 4813, 4825, 4843, 4844, 4912, 4927, 4928, 4929, 4960, 4961, 4962, 4963, and heretofore issued by the United States to the State of Texas, being, each of them, for the sum of one thousand dollars, ($1,000,) and of eighty-five (85) coupons to said bonds attached or belonging, being of the aggregate value of two thousand and seventy-five dollars, ($2,075;) which said bonds and coupons were redeemed for the said defendant at the Treasury of the United States on the said 27th day of February, 1867; and in default of the payment of the said sum of twenty-one thousand and seventy-five dollars ($21,075) by the said defendant The First National Bank of Washington, within the ten days hereinbefore limited, together with the interest thereon from the said 27th day of February, 1867, it is further ordered, adjudged, and decreed that the defendant Robert W. Tayler, trustee, within ten days after said default, sell the securities deposited with him as trustee by the said defendant The First National Bank of Washington, at the time of
326 the redemption of the aforesaid Texan indemnity bonds, to wit, the securities known as United States five-twenty bonds, numbered 577, 578, & 579, issued under the act of Congress of March 3, 1865, each of them for the sum of $10,000, and out of the proceeds of said sale, after the payment of the expenses thereof, shall pay over to the said plaintiff, The State of Texas, the aforesaid sum of twenty-one thousand and seventy-five dollars ($21,075) in gold coin, with interest thereon from the said 27th day of February, 1867, at the rate of six per cent. per annum until paid.

It is further ordered, adjudged, and decreed that the defendants pay the costs of this suit.

From which decree an appeal is prayed in open court and allowed.

By order of the court.

327 In the supreme court of the District of Columbia, the 27th day of January, 1871.

THE STATE OF TEXAS, PL'FF,
vs.
GEORGE W. WHITE, JOHN CHILES, HUGH McCulloch, Robert W. Tayler, William S. Huntington, and The First National Bank of Washington, defendants.
} In equity. No. 1280. Appeal.

Know all men by these presents that we, The First National Bank of Washington and William S. Huntington, & , are bound unto the above-named plaintiff in the sum of fifty thousand dollars, to be paid to the said plaintiff; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 27th day of January, 1871.

Whereas the above-named defendants The First National Bank of Washington & William S. Huntington, have prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia, & the same has been allowed:

Now, therefore, the condition of this obligation is, that if the above-named appellants shall prosecute *his* said appeal to effect, and answer such decree as may be pronounced against them by said Supreme Court of the United States, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

First Nat'l Bank of Washington,

By H. D. COOKE, *P't.*
W. S. HUNTINGTON.
T. H. GASSAWAY.

Sealed and delivered in presence of—
N. CALLAN.
T. E. ROESSLE.

The above bond is approved.

D. K. CARTTER,
Ch'f Justice.

JA'Y 27, 1871.

328 *Certificate to record.*

CLERK'S OFFICE, SUPREME COURT
OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing 327 pages of writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled The State of Texas vs. George W. Chiles et al., 1280, equity docket 9.

In testimony whereof I hereto subscribe my name and affiix the seal of said court this 27th day of November, A. D. 1871.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 523. The First National Bank of Washington and William S. Huntington, plaintiff' in error, vs. The State of Texas. Dist. of Columbia sup. court. Filed 11th December, 1871.

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Supreme Court of the United States.

DECEMBER TERM, 1871.—No. 523.

THE FIRST NATIONAL BANK OF WASHINGTON and WILLIAM S. HUNTINGTON, Appellants,

vs.

THE STATE OF TEXAS, Appellee.

APPEAL FROM SUPREME COURT OF DISTRICT OF COLUMBIA.

ARGUMENT FOR APPELLANTS.

J. HUBLEY ASHTON,
WALTER S. COX,
Of Counsel.

McGill & Witherow, Printers, 1107 E street, Washington, D.C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

The First National Bank of Washington and William S. Huntington, appellants,

vs.

The State of Texas, appellee.

No. 523.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

STATEMENT OF THE CASE.

The appellee, complainant below, filed a bill in equity, in the Supreme Court of the District of Columbia, against the appellants and George W. White and John Chiles as defendants, and afterwards an amended bill against the same parties and other persons, Hugh McCulloch and Robert W. Tayler, as defendants, whereby it sought to recover the amount of certain bonds known as "Texas Indemnity Bonds," issued by the United States to the State of Texas under authority of the act of Congress of September 9, 1850, and pretended to have been parcel of the bonds transferred to White and Chiles under a contract of January 12, 1865, with the "Military Board" organized by the rebel government of Texas, which bonds had been previously redeemed at the Treasury of the United States and the proceeds paid to the appellants, and as substitute for which (the amended bill averred) the appellants had placed in the hands of the defendant Tayler, Comptroller of the Treasury, certain 5.20 bonds of the United States. The bill prayed that the complainant might be paid the value of its indemnity bonds so redeemed out of the said 5.20 bonds, and that the defendant Tayler might be decreed to pay the same over to the complainant in satisfaction of its claim to the indemnity bonds. (Rec. p. 15.)

Answers were filed by the appellants and the defendants, McCulloch and Tayler, and a plea and, afterwards, a demurrer, by the defendant Chiles.

The defendant White does not seem by the record to have appeared.

On the 28th of April, 1870, the complainant moved the court to dismiss so much of the bill as made White and Chiles defendants, as it appeared by the evidence that they had no interest in the bonds set forth in the pleadings; and the court so ordered. (Rec., p. 91.)

A general replication (Rec., p. 28) having been filed by the complainant to the answers of the above defendants, proofs were taken by both parties; and on bill, answer, and evidence a decree was passed by the court below, adjudging that the appellant, The First National Bank of Washington, was liable to pay the State of Texas the sum of $21,075 in gold coin, with interest from February 27, 1867, being the amount of nineteen (19) "Texas Indemnity Bonds" and coupons redeemed for the appellant at the Treasury; and directing, in default of such payment within ten days, the defendant Tayler to sell the United States 5.20 bonds deposited with him at the time of the redemption of the Indemnity Bonds, and pay to the appellee the said sum in gold coin, with interest from February 27, 1867. (Decree, Rec., p. 94.)

The bonds embraced by this decree are numbered as follows: 4226, 4227, 4229, 4703, 4705, 4706, 4748, 4813, 4825, 4843, 4844, 4912, 4927, 4928, 4929, 4960, 4961, 4962, 4963.

From this decree the present appeal was taken:

ABSTRACT OF THE PLEADINGS AND PROOFS.

THE PLEADINGS.

1. *The Bills.* The original bill, filed May 8, 1868, was against the present appellants and against Geo. W. White and John Chiles; and alleged substantially that, on the 12th of January, 1865, the "Military Board," organized by the rebel government of Texas, sold and delivered to White and Chiles, under contract of that date, one hundred and thirty-five of the "Indemnity Bonds" issued to Texas by the United States under authority of the act of Congress of September 9, 1850; that the said contract was null, void, and of no effect; that the appellants hold and claim twelve (12) of the bonds so delivered to White and Chiles, either as agents of those parties or purchasers from them; that the bonds so held were never indorsed in such manner as is required by law to pass the title of the State; and that the appellants obtained or purchased said bonds after their maturity and with notice of the circumstances under which the same had been acquired by White and Chiles.

The bill prayed an injunction, restraining the defendants from demanding or receiving from the United States the amount due on the said bonds and the coupons thereto attached, or any other securities into which the same may have been converted, and an order directing the delivery of the said bonds or securities to the State, and for general relief. (Bill, Rec., pp. 1–5.)

The *Amended* bill, filed April 28, 1869, made the same parties, and two others, Hugh McCulloch and Robert W. Tayler, defendants; and averred the possession and claim, on the part of the appellants, of the twelve bonds mentioned in the original bill, and also of other bonds of the same class, the numbers of which are given, amounting in all to thirty-four bonds. (Rec., p. 11.)

The bill alleges that all of the bonds named and claimed by it were part of a lot sold to White and Chiles by the "Military Board;" and as respects *four* of them, (Nos.

4960, 4961, 4962, and 4963,) that, by reason of their non-indorsement by any Governor of Texas, no legal title to the same could be divested out of the complainant, whether the four bonds passed under the contract with White and Chiles, or in any other way. (Rec., p. 11.)

It then proceeds to state a certain agreement between the Bank, by its cashier, Huntington, and Mr. McCulloch, as Secretary of the Treasury, in February, 1867, by which the latter consented to redeem and pay the bonds referred to, on condition that the Bank would deposit in the hands of R. W. Tayler, Comptroller of the Treasury, thirty thousand dollars of United States 7.30 bonds, "*to be held by him as indemnity for said McCulloch against any personal damage, loss, or expense, in which he might be involved by reason of the payment or redemption of said bonds or coupons.*" (Rec., p. 12.) This condition, it states, was fulfilled; the 7.30 bonds (afterwards changed to 5.20 bonds) were deposited, as required; and the Indemnity Bonds paid in gold, and the proceeds converted by the appellants.

The bill proceeds to allege that, though the Bank, in form, received the proceeds of the Indemnity Bonds, yet, in truth and in fact, the amount deposited with Mr. Tayler was intended to be substituted as and for those proceeds, and to remain subject to the claim of the State of Texas, "the same as if said bonds had remained in specie in the Treasury, and had not been nominally redeemed."

But, in any event, the complainant charges: "It is entitled, at its election, to claim the said amount of 5.20 bonds, as a fund substituted in lieu of said Texas Indemnity Bonds;" and it so elects, and prays accordingly, an injunction, (as in the original bill;) and that it may be paid "for the value of its indemnity bonds, so redeemed out of said amount, in 5.20 bonds of the United States, so in the hands of the defendant, R. W. Tayler; and that he may be decreed to pay the same over to complainant, with all the increase thereof, in satisfaction of the claim by reason of said Indemnity Bonds." (Amended Bill, Rec., p. 8–15.)

2. *The Answers.* The answers in the record are those of Mr. Tayler, Mr. McCulloch, and the present appellants.

(*a*) Mr. Tayler's answer states that, on or about the 27th of February, 1867, the Secretary of the Treasury directed the payment to the First National Bank of nineteen (19) Texas Indemnity Bonds and coupons, (the numbers being those named in the decree, *supra*,) previously deposited in the Department for redemption; but that, in view of the claim of the State to these and other like bonds, the pending suit in the Supreme Court for the recovery of the *other* bonds, and a personal action which had been begun against Mr. McCulloch for the detention of sundry bonds, including *some* of those redeemed to the Bank, and other like proceedings, in which the Secretary of the Treasury did not desire to be involved, he required the Bank, before payment, to deposit with the respondent 7.30 notes of the United States, "to be held in trust to await the result of the litigation."

The 7.30 notes were, in September, 1867, converted, with the approbation of the Bank, into 5.20 bonds, payable to respondent as trustee; and he states that he holds the same, and certificates of deposit of the Bank for the interest on these securities, in that capacity. (Rec., pp. 17, 18.)

(*b*) The answer of Mr. McCulloch states that *whatever he did* in relation to the bonds presented by the Bank was intended, as it was adapted, to protect the rights of all parties, as they should be judicially determined. (Rec., p. 17.)

(*c*) The answers of the Bank and Mr. Huntington, to the original and amended bill, are in substance as follows:

A. They allege that the complainant has not the requisite *status* to enable it to prosecute this suit. (Rec., p. 19.)

B. They disclaim any knowledge of the alleged contract between White and Chiles and the so-called "Military Board," set out in the bill; and require proof of the same. (Rec., pp. 20, 92.)

C. They deny that any of the bonds, deposited in the Treasury Department by the Bank for redemption and paid to it, came through the hands of, or were ever held by, White and Chiles, in manner and form as charged in the bill. (Rec., pp. 20, 23, 92.) And they expressly require proof of the charge. (Rec., p. 92.)

D. They deny, if any of the bonds belonged to the class known as the "White and Chiles bonds," that they had any knowledge, notice, or suspicion of the fact, when they purchased them; and aver that, before they bought them, they made diligent inquiry in the Treasury Department to ascertain, if possible, whether they belonged to that class; that none of the officers of the Department could identify any of them as of that class; that they purchased, actually believing they were not of that class; and that they so purchased in good faith for a full consideration—98 and 92 cents to the dollar in gold.

E. They deny that they had any notice that the State of Texas claimed any of the bonds they bought. (Rec., pp. 21, 23.)

F. They deny that the 7.30 bonds were to be held in trust by R. W. Tayler, to answer in the room and stead of the Indemnity Bonds, for any liability they might be subjected to on their account; and aver that the 7.30 bonds were intended alone as personal indemnity to Mr. McCulloch, and for no other or different purpose.

G. They deny that the bonds were merely nominally redeemed, and aver that they were absolutely and unconditionally redeemed.

H. They aver that the First National Bank is solvent, and amply able to pay any liability it may be adjudged to have incurred in the premises.

I. They state the supposed terms of a compromise between the complainant and White and Chiles, after the institution of the suit in the Supreme Court of the United States, by the terms of which the State released its claim to these bonds, if in fact they had passed through the hands of White and Chiles.

K. They admit that the bonds they purchased were not indorsed by any Governor of Texas; but deny they had any notice that such indorsement was necessary to pass the title. (Rec., p. 92.)

L. The appellants annex a schedule, showing the dates of their respective purchases of indemnity bonds, the persons from whom they purchased, the amounts paid, and the numbers of the bonds. (Rec., p. 23.)

M. They deny every allegation of the bill not in the answer admitted.

THE EVIDENCE.

I. By comparing the numbers of the bonds specified in the decree of the court below, for the amount of which the Bank is held liable, with the schedule annexed to the answers of the Bank, it will be seen that the controversy on this appeal is limited to the *five* last series of bonds (nineteen in all) and coupons mentioned in the schedule; that is to say, bonds purchased by the Bank, (98 per cent. gold,) as follows:

August	18, 1866,	from Jay Cooke & Co.	$6,600—4703-8, 4813, 25
Sept.	12,	" " " " "	1,075—4912
"	27,	" " " " "	2,125—4843, 4
Dec.	3, 1865,	" " " "	7,550—4927-9, 4960-3
Janry.	2, 1866,	" S. Wolf	3,725—4226-7-9

These were the bonds and coupons, amounting in all to $21,075, gold, paid by the Treasury Department to the Bank, on February 27, 1867; and this amount is now sought to be recovered in the present proceeding.

It will be thus seen that all the bonds now in controversy were purchased by the First National Bank from Messrs Jay Cooke & Co., of New York and Washington, in December, 1865, and August and September, 1866, except three bonds bought from one S. Wolf, agent of Haas & Co., of New York, in January, 1866.

The first *three* series of bonds, in Exhibit A to the Bank's answer, are the subject of an action of trover, pending here on writ of error, and judgment for the second series of fourteen bonds and coupons, (October 9, 1865, S. Wolf, $15,050, gold,) was obtained in the court below against the Bank. (See Rec., Nos. 429, 430.)

In that action the Bank obtained a verdict and judgment in its favor for the *first* and *third* series in the exhibit, which were presented for redemption, not by the Bank, but by F. P. Stanton, on behalf of other parties.

The inquiry now and here is thus confined to the bonds specified in the list given above, bought, with the exception of three, from Messrs. Jay Cooke & Co., in December, 1865, and August and September, 1866, and redeemed February 27, 1867.

II. The theory of fact on which the bill appears to be predicated is, that all the bonds now in question were originally part and parcel of the lot delivered to *White* and *Chiles*, by the Military Board, under a contract of January 12, 1865; and in respect to four of the bonds, to wit: Nos. 4960, 4961, 4962, and 4963, whether they belonged to the White and Chiles class or not, they passed out of the possession of the State without the indorsement of the Governor: the theory of the law being, in regard to the four bonds thus described, that the absence of the indorsement alone absolutely defeated the title of every purchaser, under whatsoever circumstances he may have acquired them.

The answer expressly denies any knowledge on the part of the respondents of the alleged transaction with White & Chiles, and especially that *any* of the bonds belonged to the class known as the "*White & Chiles bonds*," and demands proof of this charge in the bill. It is directly responsive to the bill. It is, therefore, to be treated, not merely in the nature of plea of denial, by way of special traverse, but as evidence for the defendants; and as evidence we shall contend it must prevail, unless overcome by the testimony of two witnesses, or of one witness and clear corroborating circumstances, according to the general rule of equity pleading and evidence. As this charge of the *White & Chiles* contamination is the principal charge which the bank is required to meet in respect to the bonds, in this proceeding, with the exception of the four Nos. 4960–4963, and which it has met in this way by its answer, it will be important to examine the evidence adduced by the State to overcome the demand of the Bank.

In the first place, we observe, the alleged contract between White & Chiles and the members of the Military Board, set out in the bill, is not proved by the complainant. A supposed copy of it is exhibited with the bill; but no evidence appears to have been adduced to prove the contract. We find no proof of it in the record. The testimony on which the complainant must rely to establish the principal fact charged in regard to these bonds is that of Mr. Comptroller Tayler and Mr. Paschal. In regard to Mr. Tayler's testimony, we say:

1. That he swears distinctly that certain of the bonds numbered 4960, 4961, 4962, and 4963 were *not* of the White & Chiles class. These bonds are, therefore, out of the case made by the bill, unless the want of indorsement by the Governor, (which we admit they had not,) vitiates our title to them. They are not of the proscribed class. (Dep. of Tayler, ans. to 28 int., Rec. p. 32. Dep. of Tayler, ans. to 48 int., Rec. p. 35.)

2. Mr. Tayler states that he is informed that the bonds delivered to the Southern Pacific Railroad Company, in pursuance of laws of the State passed prior to the rebellion, were 4694 to 4842 inclusive. These were never in the hands of the Military Board, or of White & Chiles, as is conceded. Now, among the bonds involved in this suit are Nos. 4703, 4705, 4706, 4708, 4813, 4825; all, according to Mr. Tayler's testimony, of the class delivered to the Pacific Railroad Company. (See Rec. p. 35; Exhibit A., Rec. p. 23.) These were purchased by the Bank from Jay Cooke & Co., August 18, 1866.

3. Mr. Tayler expressly says, as we read his deposition, that when he states that the bonds paid to the bank belonged to that class, he testifies solely to his *opinion;* an opinion which he candidly admits, as we understand, was erroneous, and founded on insufficient data in the case of Nos. 4960–4963.

In answer to the 8th interrogatory he says: "From all the circumstances my opinion is, those were of the White & Chiles bonds. *That is only an opinion, however.*" (Rec. p. 29.) And throughout his deposition the same proper caution is observed.

4. As to the *data* on which this opinion is based he says, in his direct examination: "The evidence on file in the Department shows rather those that were *not* of the White & Chiles bonds than those that *were*, and this evidence is so voluminous, *that I have not had time to examine it fully.*" (Rec. p. 35.)

On cross-examination:

"3 Q. Do you know, of your own knowledge, that White & Chiles, or either of them, ever saw one of these bonds?

"A. I know it only from the papers on file in the Department; that is, *from my opinion of what those papers show.*

"They are too numerous for me to present here now, and I might add, that one would have to study them very carefully, and make his calculations as to the different bonds.

"It would be by taking the 782 bonds that were not indorsed, and tracing them back, by the evidence, into the hands of those parties who held them at different times, and ascertaining, in some instances, the particular numbers that were known to be in the hands of particular parties before the transaction between White & Chiles and the Military Board, and taking others again, that came from the State of Texas, and then drawing my conclusions as to what were White & Chiles' bonds." (Dep. of Mr. Tayler, Rec., p. 37.

5. Many of the statements in this deposition are derived apparently from a certain report of E. M. Pease and Swante Palm, made to Governor Hamilton, October 30, 1865, and from correspondence had with the Treasurer of the State, (Rec., p. 35.) This report and this correspondence are not produced or given in evidence by the complainant; and, like the papers on file in the Department, none of which are produced and proved, our knowledge of them is derived entirely from Mr. Tayler's report of their contents.

It thus appears that a large portion of this testimony consists of statements of the *contents* of papers not produced, in the possession of the Department, and of *conclusions of fact* drawn by the witness from such contents; which, by no rule of law we are familiar with, is competent evidence for judicial purposes, either of the papers or of the matters of fact in controversy.

The danger of this method of proving facts, on which important rights of property depend, is sufficiently manifest from what the excellent Comptroller of the Treasury himself states:

"28 Q. Have you any means of knowing how many of them were what we call the White & Chiles bonds. In other words, you have written me four of them were not.

"A. I am not able to state without looking over the whole matter. It may be I have a copy of that letter. If I have, I can tell; for I examined the matter thoroughly at that time, It was in looking over some papers that I discovered the fact you have mentioned. It was from a letter of Epperson and Walton, agents of the State, that I learned that those four bonds were in the hands of N. B. Pearce, one of the late Military Board of Texas, as late as June 30, 1865. They were numbered 4960, 4961, 4962, and 4963. Those four were not of the White & Chiles bonds." (Rec., p. 32.)

6. The learned Comptroller also states that, after the delivery of 148 bonds to the Southern Pacific Railroad, in pursuance of laws of the State, passed prior to the rebellion, 34 of them were obtained from that company by R. & D. G. Mills, of Galveston, and returned to the State. *Of these* 34 *bonds, he says, he has not been able to obtain a list.*

There is nothing in this record to exclude the conclusion that the bonds now in question were not part of these 34 bonds delivered to the Pacific Railroad Company.

We have already shown (paragraph 2, *supra*) that part of these bonds are certainly included in the numbers, given by Mr. Tayler, as of those delivered to the Railroad Company in 1861. We refer to these circumstances to illustrate the uncertainty of such evidence.

Mr. Paschal's deposition contains no original evidence, as we understand it, on the point now in question. He says:

"I feel confident that the bonds redeemed for the Bank, described by Mr. Tayler, were a part of the bonds which passed through the hands of White & Chiles, *and I judge this from the circumstance which he has stated.*"

This certainly is not evidence of the fact in controversy. It is not matter for an expert. The form and substance of the testimony are alike incompetent and inadmissible.

The observation of Lord Mansfield, in the leading case of *Carter* v. *Boehm*, (3 Burr, 1905,) may be pertinently cited here:

"It is mere opinion, which is not evidence; it is an opinion which, if rightly formed, could be drawn only from the same premises from which the court and jury were to determine the cause; and, therefore, it is improper and irrelevant in the mouth of a witness."

III. The substance of the evidence as to the transactions of the Bank in respect to Texas Indemnity Bonds seems to be this: Early in 1865, Mr. Stanton, as agent or counsel of A. Haas & Co., of New York, presented for redemption at the Treasury nine bonds and coupons, and on the 9th of September payment was directed by the Secretary, by advice of the First Comptroller. The Bank had no interest whatever in these bonds, and simply advanced the amount to the parties as an accommodation, after the allowance of the claim at the Treasury. But this allowance attracted its attention to these securities. Shortly afterwards, it seems, the Department received information in regard to this White & Chiles transaction; and it thereupon determined to delay the redemption of Indemnity Bonds long enough to ascertain whether it was possible to identify the particular bonds delivered to White & Chiles, and for that purpose alone. (Dep. of Mr. Chandler, Rec., pp. 86, 87; dep. of Mr. Tayler, p. 40.)

Proper and prompt inquiry appears to have been made by Mr. Huntington, of the officers of the Treasury, for any information in their possession as to the numbers or particular description of the White & Chiles class; and he was informed that it was impossible for the Department to distinguish the White & Chiles bonds from the other outstanding bonds. (Rec., p. 87.)

Mr. Tayler states positively that he could not identify those bonds at the time these numbers were purchased by the Bank. (Rec., p. ~~96.)~~ 36.)

After this delay, the Department determined to proceed with the redemption of Indemnity Bonds as before; and of this decision Mr. Huntington was apprized.

Under these circumstances—after these inquiries, and on the faith of this action by the Department—all the bonds bought by the Bank were purchased.

On the 6th or 9th of October 14 bonds were bought from Haas & Co., through their agent in this city, Simon Wolf; and these were paid at the Treasury on January 18, 1866. (Rec., p. 30.) They are, however, not here in controversy.

The only bonds purchased by the Bank of Haas & Co., here in controversy, are Nos. 4226, 4227, 4229, purchased, through S. Wolf, January 2, 1866. (See Exhibit, Rec., p 23.) The other bonds in this suit were all bought from Jay Cooke & Co. in December, 1865, and August and September, 1866. (*Ibid.*, p. 23.)

And the record shows that all the bonds remained in the Treasury until February, 1867, and were only paid after the fullest inquiry, as to their history, had been instituted by the Department; and paid in the belief that they were *not* of the White & Chiles class. (Rec., p. 67.)

The complainant has not attempted, in any manner, to show the circumstances under which *Jay Cooke & Co.* and *A. Haas & Co.*, the *previous* holders, obtained these bonds, when or from whom they were obtained by those holders. It is not denied, however, that the Bank bought the bonds now in controversy from the parties named, and at the dates specified.

Under these circumstances we shall submit, if the evidence does not satisfy the court that these bonds were part of the White & Chiles lot, that the court will presume Jay Cooke & Co. and Haas & Co. were *bona fide* holders without notice, and competent to transfer a good title to the Bank.

IV. The next evidence to be referred to relates to the payment of the bonds in question by the Department on the 27th of February, 1867, which we say was an absolute and unconditional payment, as between the Government and the Bank.

The bill alleges a payment in form merely. The answer denies it, and avers an absolute payment in fact. The question is, whether the complainant has overcome the effect of the answer by the requisite evidence.

The question of fact, we presume, is as to the precise terms of the agreement between Mr. Huntington and Mr. McCulloch. Now, Mr. McCulloch was examined as a witness; and, as we understand his testimony, he says that *he* had no understanding with Mr. Huntington on the subject, and that the understanding, whatever it was, was had between Mr. Tayler and Mr. Huntington. He states that he had certain views on the subject, which, he says, were not communicated to Mr. Tayler before the deposit of bonds. Mr. McCulloch also states that he does not recollect having any conversation with Mr. Huntington on the subject. He is positive that he cannot say that Mr. Tayler took the security or indemnity in conformity with his (Mr. McCulloch's) views.

The testimony is:

> "What the precise understanding was between the Comptroller and the parties presenting the bonds I am not advised.
>
> "I cannot say that he (Mr. Taylor) took it (the security) in conformity with my views." (Dep. of Mr. McCulloch, Rec., p. 64.

Now, then, what was the arrangement between Mr. Tayler and Mr. Huntington? We understand Mr. Tayler to say that there was none; and that "*the arrangement was made between the Secretary and Mr. Huntington.*" He continues:

"I had some talk with perhaps both of them about it, but had nothing to do with making the arrangement, as it was a matter in which I had no personal interest." (Dep. of Mr. Tayler, Rec., p. 31.)

We quote the following from the testimony of Mr. Tayler:

"So far as I was concerned, there was nothing particular said to me about it: the general idea was, and the expressions perhaps used, when speaking of Mr. Hardenberg's case, were, that they were to be held as indemnity to the Secretary. My own opinion about it was, that it meant just what the Secretary thought it meant. I have no recollection of hearing them talk together about it, but *each one talked with me separately on the subject.* I do not know that I got any understanding from Huntington at the time of the particular object of it, but I did from the Secretary, and I cared more about his understanding than I did about Mr. Huntington's. He would talk with the Secretary, and then the Secretary would talk with me.

"42 Q. Can you state the substance of what Mr. H. said at the time he deposited the 7.30 bonds in regard to the purposes and object of such deposit?

"A. My recollection is that a clerk from the Bank brought the 7.30's to me, without any letter or any instructions: just handed them to me and went away.

"43 Q. Had you any previous conversation with Mr. H., in pursuance of which the 7.30 bonds were sent you; and, if so, what was the conversation?

"A. I do not recollect any conversation with Mr. Huntington. I recollect the fact that something was said between us on the subject, but very little. The conversations I had were with the Secretary, and his conversations on the subject were with Mr. Huntington." (Dep. of Mr. Tayler, Rec., pp. 33–34.)

The cross-examination relates to this point:

"9 Q. In your examination-in-chief, you have stated that Mr. Huntington deposited the 7.30 bonds upon the same conditions that Hardenberg had deposited his bonds?

"A. I did *not* state, nor do I *intend* to state, that they were made upon the same conditions. What I intended to say was, that Mr. Huntington, learning that bonds had been deposited, asked that the same thing be done with him, and that his conversation on the subject was with the Secretary.

"10 Q. And that you did not hear?

"A. No, sir; he spoke to him, and the Secretary spoke to me."

We believe this is nearly the whole, if not quite all, of the testimony on this subject on the part of the complainant.

It shows that there was no agreement defining the object and purpose of this deposit of 7.30 bonds between Mr. Huntington and Mr. McCulloch, and none whatever between the former and Mr. Tayler; and, indeed, no definite understanding between the Secretary and the Comptroller *before* the bonds were deposited: certainly none which was communicated to Mr. Huntington.

Mr. McCulloch states, that he cannot say that he expressed his views to Mr. Tayler before he took the security. He did not, he says, express them to Mr. Huntington. And Mr. Tayler says that *he* had no precise understanding with Mr. Huntington.

The complainant also examined Mr. Huntington as its own witness in this case; and he distinctly states, that the Bank deposited the 7.30 bonds as indemnity against any personal liability that Mr. McCulloch might incur by redeeming the bonds, and not as substitutes for the Texan Indemnity Bonds, to abide the result of any suit against the Bank.

"58 Q. State when you first furnished indemnity or substitute securities to the Secretary of the Treasury, in consideration of the redemption by him of the Texas bonds held by you or your Bank.

"A. I do not understand that I ever did. Mr. McCulloch had been threatened, not as Secretary, but individually, with suits; and although we were satisfied the bonds ought to be paid to us, yet, fearing some personal damage to him, I deposited some 7.30 notes with Mr. Tayler, as trustee, with the understanding that, if Mr. McCulloch ever suffered any loss by having, as Secretary of the Treasury, paid any of these bonds, he should be indemnified.

"59 Q. Didn't Mr. McCulloch require you to deposit the securities before he would redeem certain Texan bonds presented by your Bank?

"A. No, sir; it was a proposition of my own, having heard that he hesitated, and that payment was delayed, because he feared some personal damage." (Dep. of Mr. Huntington, Rec., pp. 54, 57.)

As to the records of the Department, Mr. Tayler, says:

"There is no entry of the trust upon the records of the Department.

"15 Q. Does the record of the Department show the fact whether or not these Texan Indemnity Bonds were redeemed or paid, and the 7.30's deposited?

"A. The official record shows the payment of the bonds to the Bank, just as it shows payment to any other party of the same kind of bonds, and shows nothing of the trust that I know of."

The present bill was not filed till a year and three months after this transaction.

We must conclude, therefore, that the complainant has not overcome the answer, and, indeed, has supported it by the testimony of Mr. Huntington, whom the State examined as its own witness.

V. The other matter of fact involved in the pleadings is the compromise between the State and White & Chiles, averred in the answer. The following testimony relates to that transaction:

Dep. of B. H. Epperson, Rec., pp. 82, 84.
Dep. of J. N. Throckmorton, Rec., p. 78.

POINTS OF ARGUMENT.

First. The politico-legal question, raised at the beginning of the answer, touching the *status* of the complainant, and its capacity to maintain a suit in a national court, at the time the bill was filed, is submitted upon the legislation of Congress relative to this State subsequent to that examined in the opinion of the court in the case of Texas v. White *et al.*

Second. The case is not within the jurisdiction of a court of equity; as an action of trover or assumpsit for money had and received to the complainant's use, would furnish a "plain, adequate, and sufficient remedy" for the injury alleged in the bill.

Third. The complainant has not proved that any of the bonds here in question were parcel of 135 bonds stated to have been delivered to White & Chiles by the Military Board, under the contract of January 12, 1865, exhibited with the bill.

Fourth. As to the equity of the State, founded on the want of an indorsement of the bonds by the Governor of Texas, we respectfully submit:

1st. That by the true construction of the act of the Legislature of Texas of December 16, 1851, the *proviso* thereof "that no bond issued as aforesaid, as a portion of the said five millions of stock, payable to bearer, shall be available in the hands of any holder until the same shall have been indorsed in the City of Austin by the Governor of the State of Texas," was of temporary or provisional operation, and was intended to guard against, and prevent, any fraudulent disposition of the bonds while *in transitu* from Washington to Austin, and, upon reaching the Treasury of the State, before they should be disposed of as might be provided by law.

2d. That after the bonds were deposited in the State Treasury, and before the rebellion, numerous acts were passed by the Legislature of Texas, which provide for the sale or other disposition of all the indemnity bonds received from the United States, none of which required, authorized, or contemplated an indorsement of the bonds by the Governor of the State; and these laws must be regarded as having superseded or repealed the proviso of the act of December 16, 1851, and rendered the indorsement of the Governor unnecessary to pass the title of the State to bonds transferred under their authority.

3d. If the court should decide that the proviso of the act of December 16, 1851, was not affected by the valid legislation of the State before the rebellion, above referred to, and the effect of the proviso should not be regarded as finally and conclusively determined by the decision in the case of Texas v. White, (7 Wall., 732,) so as to foreclose discussion of the question at the bar, we would respectfully submit, that the proviso was directory only ~~on~~ to the officers of the State; and a non-compliance with the law would not affect the title of *bona fide* purchasers, especially citizens of other States, certainly those who bought before maturity, without actual knowledge of informality in the mode of the transfer.

4th. That, the title of the previous holders of the bonds in question being unimpeached, it must be presumed that they were *bona fide* purchasers before maturity, without knowledge of any defect of title; and that the previous holders, having thus a valid title as against the State, were able to transfer, after the maturity of the bonds, an indefeasible one to the appellants.

Fifth. That the State has established no equity enforceable against the 5.20 United States bonds in the hands of the defendant, Tayler; and the decree which subjects them to sale to pay the value of the indemnity bonds redeemed for the appellants is erroneous, and should be reversed.

ARGUMENT.

FIRST.

A Court of Equity has no jurisdiction of this case.

1. It may be answered, in the first place, that this objection is disposed of by the decisions of this court in the former Texas Cases, (7 Wall., 700; 10 *Ib.*, 68,) but the point passed *sub silentio* in those cases. We find, in the briefs of counsel, but a single reference to it, and that occurs in the printed argument of Mr. Carlisle, counsel of Hardenberg, who mentions it only to waive it. He says, at the end of his Brief:

> "It is certainly desirable that this controversy should be settled on its merits. If it were otherwise, there seems to be very obvious and conclusive objections to the equitable jurisdiction of the Court in the premises."

There was, however, in the case of Texas *v.* White & Chiles (7 Wall., 700) an element of equity jurisdiction, which does not exist in the present case. The principal object of that bill was, to obtain a decree declaring a contract of White & Chiles, (who were insolvent,) with the rebel government of Texas, null and void, and a formal decree to that effect was made by this Court. But in the present case, though White & Chiles were originally parties to the bill, it was dismissed, as against them, on the complainant's motion, and the bill stands against the Bank alone, as the principal defendant in the case. The question then is, whether, as it thus stands, a case is presented for the jurisdiction of a Court of Equity.

2. The cases in this Court hold, with one voice, that the *only* test of equity jurisdiction, in such cases, is the absence of a plain and adequate remedy at law; and that, if the remedy at law is as practical and efficient to the ends of justice, and its prompt administration, as the remedy in equity, there is no jurisdiction. Mr. Justice Swayne, in *Parker* v. *Winnepsiogee Lake Co.*, (2 Black, 550,) gives the uniform language of this Court before and since. He says:

> "The objection of want of jurisdiction may be enforced by the Court *sua sponta*, though not raised by the pleadings, nor suggested by the counsel. (2 Cr., 419; 5 Pet., 496; 2 How., 383.) The 16th sec. of the Judicial Act of 1789 provides: 'That suits in equity shall not be sustained in either of the courts of the United States, in any case were plain, adequate, and complete remedy can be had at law.' This is merely declaratory of the pre-existing rule, and does not apply where the remedy is not 'plain, adequate, and complete,' or, in other words, where it is not 'as practical and efficient to the ends of justice, and to its prompt administration, as the remedy in equity.' (3 Pet., 215.) But where the remedy at law *is* of this character, the party seeking redress must pursue it. In such case, the adverse

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party has a constitutional right to a trial by jury. 19 How., 278."

Jones *v.* Green *et al.*, 1 Wall., 330.
Wright *v.* Ellison, 1 *Ib.*, 22.
Watson *v.* Sutherland, 5 *Ib.*, 79.
Thompson *v.* R. R. Co., 6 *Ib.*, 136.
Payne *v.* Hook, 7 *Ib.*, 430.

3. Now, it seems to us impossible to say that the remedy at law, available to the complainant, is not sufficient for the purposes of complete justice in this case; especially as, in the case of other bonds, it has been tried, and the record of that suit is now here for review. There is no insolvency of parties in this case. There is no danger of irreparable injury through the negotiation of the bonds to *bona fide* purchasers. The cases are undoubtedly numerous in which equity has interposed to prevent the illegal transfer of negotiable bills and notes before maturity, which, if sold, would be valid obligations in the hands of *bona fide* holders. (2 Story's Eq. Jur., sec. 906; Kerr on Inj., 595, 596; Patrick *v.* Harrison, 3 Br. C. C., 476; Hood *v.* Aston, 1 Russ., 412.) It is admitted that the bonds have been paid and cancelled; and it is not pretended that the 5.20 bonds on deposit were purchased with the proceeds of the Indemnity Bonds.

If the complainant owned the Indemnity Bonds, and the defendant illegally converted them, it is liable in an ordinary action of trover, or in an action of assumpsit for money received to its use; and upon a judgment recovered against the Bank, execution could issue against any of its property, including the 5.20 bonds in the hands of the Comptroller. And this is what the present decree accomplishes—no more and no less. It enters a *money* judgment against the Bank for $21,075, and directs a sale of the 5.20 bonds to pay it—the very thing a common-law court could do in the premises. If the remedy is sufficient in the one case, it must be so in the other; and the defendant cannot be deprived of its constitutional right to a trial by jury. The sufficiency or the inadequacy, as the case may be, of the power of the courts of ordinary jurisdiction for effectuating the purposes of complete justice, is, we repeat, the rule and the measure which must, under our system, regulate the course of the courts of chancery in assuming or declining to assume jurisdiction.

SECOND.

It is not established by the evidence in the cause, as matter of fact, that any of the bonds in question were parcel of the series transferred to White & Chiles under a contract of January 12, 1865, with the rebel authorities of Texas.

1. As we have seen, this is the primary issue of fact made by the pleadings. The effect the answer is entitled to in such a case is well established.

> "In every case the answer of the defendant to a bill filed against him, upon any matter stated in the bill and responsive to it, is evidence in his own favor. Nay, the doctrine of equity goes further: for not only is such an answer proof in favor of the defendant, as to matters of fact, of which the bill seeks a disclosure from him, but it is conclusive in his favor, unless it is overcome by the *satisfactory* testimony of two opposing witnesses, or of one witness, corroborated by other circumstances and facts, which give to it a greater weight than the answer, or which are equivalent in weight to a second witness."

2 Story's Equity Jurisp., § 1528.
Slater *v.* Maxwell, 6 Wall., 275.

It is plain, from the record, that the contract set out in the bill is not proved. But we advert now to the proof attempted as to the identity of these bonds. Here two witnesses have stated that they are of opinion these were White & Chiles bonds. But is the evidence legal or *satisfactory*, as required by the above rule? We have analyzed, under a previous head, the testimony of the two gentlemen examined for the complainant; and it seems not to be legal evidence, either in its form or its substance, to establish the fact on which the equity of the bill reposes. In form, that of Mr. Tayler is a mere expression of the *opinion* of the witness that the fact is as declared. It does not purport to go further. But is his opinion evidence? We apprehend not. In substance, the testimony is purely *hearsay*. The witness speaks as to the contents of documents on file in the Treasury Department, and draws his own conclusions from the facts, verified, or supposed to be, by those documents. But the conclusions of fact are for the Court to draw; and the evidentiary facts are to be proved by the documents themselves, if competent evidence for that purpose. Whether they are or not, we know not; for they are not here.

The simple question of fact is, whether the identical nineteen bonds now claimed were delivered to White & Chiles in March, 1865? We apprehend there is no competent and, therefore, no satisfactory, evidence, for judicial purposes, of that fact in this record. Mr. Tayler's opinion, he expressly says, is based on certain calculations made by him as to the different bonds, and he candidly says the means employed are not of the highest certainty as to all the bonds. (Rec., p. 34.) The data employed by him, and conclusions reached, may be sufficient to create a moral persuasion in his mind that they are of a particular class. But the moral convictions of the witness cannot guide the judicial determination of the court on a question of property.

The information available to the Department as to the numbers of the bonds disposed of in the various ways mentioned by the rebel government, is stated not to be complete. No list, for example, has been obtained of thirty-four of the bonds originally delivered to the Pacific Railroad Company. The numbers of these bonds, when ascertained, may disturb all the calculations heretofore made.

Judge Paschal's testimony professes to be founded solely on the "circumstances" stated by Mr. Tayler. (Rec., p. 42.) In other words, he judges, from what Mr. Tayler states, that our bonds came through White & Chiles. This is not admissible testimony. He states no facts within his own knowledge. He hears the statement of the previous witness, and agrees with him in opinion that they show the fact to be as alleged by the complainant. This is the whole of it; and, certainly, it cannot weigh anything in this case.

2. But the theory of the bill, as to the four bonds, (Nos. 4960–4963,) is expressly negatived by the testimony of Mr. Tayler, and impliedly negatived as to Nos. 4703, 4705, 4706, 4708, (4748,) 4813, and 4825, (six bonds;) for, in respect to these last bonds, they appear to have been included in the 148 bonds (4694 to 4842) which Mr. Tayler says he is informed were delivered under old legislation of the State to the Southern Pacific Railroad Company. (Rec., p. 35.) Regarding all the evidence in this record it is impossible to say that it is sufficient in a court of equity to overcome the denials in the answer.

THIRD.

The State has no equity founded on the non-indorsement of the bonds by the Governor of the State.

1. The alternative view presented in the bill as to certain of the bonds—those stated by Mr. Tayler not to belong to the White & Chiles class—requires an examination of the provision of the Texas act of December 16, 1851, "that no bond issued as aforesaid, as portion of the said five millions of stock, payable to bearer, shall be available in the hands of any holder until the same shall have been indorsed in the City of Austin, by the Governor of the State of Texas." In the case of Texas *v.* White, (7 Wall, 700,) it was contended that this statute had been repealed by an act of the rebel Legislature of January 11, 1862. This act the court held ~~so far~~ invalid, so far as it was in aid of the rebellion. But in that case the effect of the subsequent legislation of the State, prior to the rebellion, upon this proviso of the

act of 1851, appears not to have been discussed by counsel, and, therefore, not considered by the court. And as we rely, in this case, upon that legislation, we desire to present our views touching the meaning of the act of 1851, and the effect of that subsequent legislation, as respects the rights of *bona fide* purchasers of the bonds, before maturity, and without notice of any defects.

In the first place, it would seem clear, from the circumstances under which the act of 1851 was passed, as well as from the character of the subsequent legislation of the State, prior to the rebellion, that the proviso in question was of temporary operation, and was intended to prevent any fraudulent disposition of the bonds while *in transitu* between Washington and Austin, and, on reaching the Treasury of the State, before they should be disposed of by the Legislature. The act directed the Comptroller of Public Accounts "to proceed to the City of Washington, and receive from the Secretary of the Treasury, or other proper authority, the five millions of stock; to sign and deliver receipts for the same; and, when received, to deposit them in the Treasury of the State of Texas, *to be disposed of as may be provided by law.*" Then followed the *proviso*, "that no bond issued as aforesaid, as a portion of the said five millions of stock, payable to bearer, shall be available in the hands of any holders *until* the same shall have been indorsed in the City of *Austin* by the Governor of the State of Texas."

Plainly, there is nothing here to indicate that it was the purpose of the Legislature to declare that, *after* it should make provision for disposing of the bonds, the Governor's indorsement should be necessary to a valid sale and transfer of them. Manifestly, its only purpose was to declare that, *before* such legislative provision should be made, they would not be available in the hands of any holder unless they bore such indorsement. Clearly, the only object of the proviso was to protect the State against any fraudulent misappropriation of the securities by its own officers, previous to the proper action of the Legislature for the disposal of them.

They were to remain in the Treasury *until* disposed of by law; and we cannot think the Legislature can be supposed to have meant, whatever process and proceeding might be afterwards prescribed by law for the sale and transfer of them, that no purchaser could acquire a valid title without the indorsement of the Governor; that, though every formality prescribed by any law authorizing the sale of the bonds, should be complied with by the officers invested with authority to dispose of them, that nevertheless no title could pass if the Governor failed to do *what no law authorized or required him to do;* and that, though everything declared to be necessary to pass the title should be performed, still no title could be conveyed, if there was an omission of an act which *no law ever declared necessary to the transfer of the property of the State.* Such a construction of the act of 1851 cannot be entertained, for it would make the law a ready instrument of fraud, in the hands of the State, upon the rights of citizens dealing with it in respect to this property.

The construction which gives this act a temporary operation, and limits it to the object which it was undoubtedly intended to accomplish, is fortified by several extrinsic considerations.

The first is, that whereas the Legislature immediately afterwards proceeded to dispose of the bonds, and did provide for the sale, or other disposition, of the entire four millions, between 1851 and 1860, as we shall see, no act authorized or required the Governor to indorse any of them, or declared his indorsemant necessary to pass the title; and several acts in terms provided other formalities for the transfer of the interest of the State, and exclude by clear implication the view that such indorsement was at all necessary to that end. As the act of 1851, as we have said, neither required nor authorized him to indorse any bonds—as it imposed no duty and conferred no authority—it is clear the Legislature, if it intended to make his indorsement essential to a proper transfer of the securities, would have supplied the authority thus wholly wanting in the act of 1851. But it never did; and this shows that, in the contemplation of the Legislature, the act was regarded as of no further force or effect whatever.

Again, it is not to be presumed that the Legislature intended to so far change the contract evidenced by those bonds as to render them permanently unnegotiable, except by indorsement of the Governor. After they reached the Treasury of the ~~United~~ State~~s~~, and were received by its authorities, they became, by the words of the contract, negotiable by delivery; and yet the act of 1851 declares, according to the construction contended for by the State, that they shall not be transferable without indorsement.

It is not presumable that the Legislature meant to change in this manner the contract expressed on the face of the instruments.

2. We now direct attention to the various acts of the Legislature of Texas prior to the rebellion, which disposed of the whole five millions of bonds, and which, in any view, must be regarded as having superseded or repealed the proviso of the act of December 16, 1851, and rendered the indorsement of the Governor unnecessary to pass the title of the State to bonds transferred under those laws.

(*a*) The acts of the same Legislature who passed the act of December 16, 1851. They are as follows:

January 31, 1852,	Laws Texas, 1851–'52,	p. 41.
February 13,	" " "	p. 97.
February 14,	" " "	p. 100.
February 16,	" " "	p. 125.
February 16,	" " "	p. 131.

It will be seen that none of these laws contemplate the indorsement of the Governor as necessary to a sale and transfer, and several provide an entirely different method of transferring them.

The act of January 31, 1852, is "An act providing for the liquidation and payment of the debt of the late Republic of Texas." The first section appropriated two million dollars of these bonds for the payment of certain described portions of the debt of the late Republic of Texas. The second section directed payments to be made as follows:

> "That the disbursements herein provided for shall be made in the bonds or stock of indemnity alluded to in the first section of this act, or the proceeds thereof, by the treasurer of this State, upon the certificates of indebtedness issued by the auditor and comptroller, under the provisions of the laws above named, and in all other respects the said treasurer shall be governed by the laws regulating the payment of money out of the State treasury; and the comptroller of public accounts for the State of Texas is hereby authorized to transfer a sufficient amount of said stock, when the transfer shall be necessary, by simple indorsement, attested by his seal of office, to be countersigned by the treasurer of the State, which transfer shall divest the State of Texas of all interest in such bonds or stock, and invest the same in the holder thereof."

This provision clearly ignores the proviso in the act of December 16, 1851.

The next is that of February 13, 1852, appropriating "the sum of one hundred and twenty-three thousand two hundred and twenty dollars and thirty-three cents of the Bonds of Indemnity, or the proceeds thereof," for the payment of a certain portion of the debt, "which shall be paid in the manner prescribed for the payment of claims of a like nature by an act passed the 31st day of January, 1852," &c.

By this act the proviso and the action of the Governor are again ignored.

The act of February 14, 1852, appropriated "the sum of one hundred thousand dollars out of the bonds, or the proceeds thereof, which have already accrued to the State of Texas upon the five millions of dollars of bonds issued to her * * by the Government of the United States * * for the erection of a state-house or capitol at the seat of the State government." The second section of the same act appropriated twenty-five thousand dollars of the bonds for furnishing the state-house when completed.

Contractors were to be paid by the State treasurer on drafts upon the comptroller; but no further provision was made for the transfer or indorsement of the bonds.

The act of February 16, 1852, "making appropriations for the use and support of the State government for the years 1852 and 1853," has the following provision, sec. 3:

> "That the Treasurer of the State be, and he is hereby, authorized to transfer a sufficient amount of the five per cent. United States bonds to the account of the General School Fund, to cover the amount of thirty-six thousand dollars, now to the credit of said fund, in State bonds issued in accordance with an act for the safe and profitable investment of the school fund, approved December 2, 1850; also to cover the amount of specie now in the Treasury to the credit of said fund."

Another act of February 16, 1852, made it

> "The duty of the Comptroller of the State of Texas to publish for proposals for the sale of one million of the bonds of the United States, or so much thereof as he may think proper." * * "Said proposals shall be, first, for the sale of said bonds deliverable at the City of Austin, the proceeds thereof deliverable at the same place; second, deliverable at the City of Washington, D. C., the proceeds thereof deliverable at the same place; third, deliverable at the City of New Orleans, the proceeds deliverable at the same place."

This act contains no provision as to the indorsement or transfer of the bonds, but fixes the minimum price at par and accrued interest.

(*b*) In 1854 the State began to legislate in respect to these bonds again, as follows:

Act	January	31, 1854,	Laws	Texas	1853–'54, p. 17.
"	August	13, 1856,	"	"	1855–'56, p. 33.
"	August	28, 1856,	"	"	1855–'56, p. 65.
"	August	29, 1856,	"	"	1855–'56, p. 107.
"	Decem.	23, 1857,	"	"	1857–'58, p. 31.
"	Feb'y	11, 1858,	"	"	1857–'58, p. 149.
"	Feb'y	11, 1860,	"	"	1859–'60, p. 82.

The substance of these acts is as follows:

The act of January 31, 1854, "to establish a system of schools." The first section enacts:

"That two millions of dollars of the five per cent. bonds of the United States, now remaining in the Treasury of the State, be set apart as a school fund, for the support and maintenance of public schools, which shall be called the Special School Fund, and the interest arising therefrom shall be apportioned and distributed for the support of schools."

The act of August 13, 1856, "to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State," provides:

"That the Governor, Comptroller, and Attorney General shall, *ex officio*, constitute a board of school commissioners, whose duty it shall be to draw from the Treasury the special school fund created by the act of January 31, 1854, * * and such other amount as may hereafter be added to said fund, and invest the same as provided in this act."

When everything entitling a railroad company to a loan has been completed—

"Said board shall draw a warrant on the Treasury of the State, in the name of said company, against said special school fund, for such amount of said bonds as it may be entitled to under the provisions of this act; which warrant shall state on account of what work it is drawn, shall be signed by said board of commissioners and countersigned by the Governor, and delivered to the president or duly authorized agent of said company. Upon the presentation of such warrant or warrants to the Treasury of the State, the amount of said indemnity bonds called for in the same shall be delivered and transferred according to law, to the president or authorized agent of said company, his receipt taken therefor, and the same charged to the special school fund."

In this act there is no provision for the indorsement of the bonds.

The next act is that of August 28, 1856, the first section of which is,

"That the Comptroller of the State is hereby authorized and required to dispose, at public sale, of such an amount of the United States bonds, now in the Treasury to the credit of the State account, as may be required, from time to time, to meet the expenses of the government, and such appropriations as may be called for during the years 1856 and 1857."

The second section provides that, in making sales of the bonds, the Comptroller shall be governed by the provisions of the act of February 16, 1852, authorizing the sale of one million dollars of such bonds.

The act of August 29, 1856, authorized and required the Treasurer of State to "transfer to the general or State account the specie now in the Treasury to the credit of the general school fund account, and replace the same from the one million five hundred and seventy-five thousand dollars bonds now standing to the credit of the State account; and it is hereby made the duty of the Treasurer annually, on the first day of July in each year, to transfer the specie then standing to the credit of the school fund, received from one-tenth taxes, to State account, and replace the same with United States bonds from the State account, unless otherwise provided by law." This act also blended into one the special school fund and the general school fund, and made a general appropriation of the interest derivable from the fund.

The act of December 23, 1857, authorized and required the Comptroller of the State

> "To dispose of one hundred thousand dollars, or any part thereof, of the five per cent. United States indemnity bonds, belonging to this State, either by sale or hypothecation, as may be deemed best, with a view of realizing funds for immediate use, and on such terms and conditions as the Governor, Comptroller, and Treasurer shall, in their judgment, think most advantageous for the interest of the State,"

the funds realized to be deposited in the State Treasury.

The act of February 11, 1858, "to establish the University of Texas," "set apart and appropriated to the establishment and maintenance of the same," "the sum of one hundred thousand dollars of the United States bonds in the Treasury not otherwise appropriated." This act made no provision for selling the bonds; but the management of the University, and the care and preservation of its property, were placed in the hands of a board of administrators, of whom the Governor was, *ex officio*, one, under whose order all expenditures were to be made. The Treasurer of State was made Treasurer of the University funds, and money was to be drawn upon the warrant of the Governor, countersigned by the Secretary, upon the Treasurer.

The act of January 31, 1860, authorized the use of the University bonds "to meet any appropriations made by law for frontier defense," and provided for their disposal "in the manner any other United States bonds are or may be disposed of by any law now existing or which may be hereafter passed."

The act of February 11, 1860, is as follows:

> "That the comptroller of public accounts be, and he is hereby, authorized to sell and convert into cash the three hundred and five thousand dollars of the United States bonds, now in the State Treasury, belonging to the general State fund, and pay the proceeds thereof into the State Treasury, to go into the general State fund: *Provided*, The said bonds shall not be sold at less than their par value; and that this act take effect and be in force from its passage."

(*c*.) Our proposition then is, that, as the foregoing acts made provision for the disposal of the entire five millions, without contemplating an indorsement of the bonds by the Governor, they superseded, and in effect repealed, the provision under consideration of the act of ~~1855~~ 1851, and *bona fide* holders had a right to presume that they were transferred conformably to the authority of these laws, and were not bound under any circumstances to inquire further.

Looking at the laws of Texas we have reviewed, purchasers would have found full authority for the sale and transfer of all and any of the bonds, without any indorsement by the State officers. When, or under what circumstances, or for what purpose, they actually left the possession of the State they cannot be presumed to have known; and if they took them before due, for valuable consideration, without actual knowledge of any facts which would impeach their title, as between other parties and the State, they acquired a title valid against the world.

"Suspicion of defects of title, or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part."
Murray *v.* Lardner, 2 Wall., 110.

3. The third observation under this head, we have ventured, in the Points of the Argument, (*supra*,) to address to the court, we have said is respectfully presented in the event the court should think the question as to the effect of the proviso of the act of 1851 is not concluded by the decision in Texas *v.* White. It would seem, perhaps, that the determination of that question was not necessary to the decision of that case; for the court, finding by the proofs and admission of the parties that the holders of the bonds, in that case, acquired them through White & Chiles, and therefore, after December 31, 1864, when they were redeemable, applied the principle, that "purchasers of notes or bonds past due, take nothing but the actual right and title of the vendors;" and as White & Chiles acquired no title, so their transferees could take none against the State. "As these persons," says the Chief Justice, "acquired no right to payment of these bonds as against the State, purchasers could acquire none through them." (7 Wall., 736.)

If, therefore, the Court should permit further argument as to the effect of the act of 1851, assuming it was not affected, as we have contended it *was*, by the legislation prior to 1860, we would respectfully submit that, though the act may have been directory and obligatory on the State officers, a non-compliance with its supposed requirement would not affect the title of *bona fide* purchasers, especially citizens of other States, as in this case, certainly of purchasers before maturity, without actual knowledge of the terms of the law.

It would seem that as respects such property—negotiable paper, governed by the law-merchant—the State, when dealing with private individuals, (certainly citizens of other States,) becomes divested in a measure of its sovereign character and assumes that of a private person. In the case of *United States Bank* v. *The Planters' Bank*. (9 Wh., 904,) this court held, that when a State became a member of a trading corporation, it divested itself, so far as concerns the transactions of the company, of its character as a State, and assumed that of a private citizen. "It acts merely," said Ch. J. Marshall, "as a corporator, and exercises no other powers in the management of its affairs than are expressly given by the incorporating act." The doctrine, we think, is applicable where a State undertakes to deal with negotiable paper of this kind; and we cannot think, in this view, that purchasers of such paper are bound to know all extrinsic facts affecting the authority of the agents of the State where power has been conferred to dispose of property, or all regulations of law prescribing the mode and manner in which the agents shall exercise the power granted, any more than those who deal with the agents of private individuals or corporations, having power to negotiate such paper, are bound to take cognizance of such extrinsic facts, or particular rules that may have been laid down for the government of the conduct of the agents. As between the State and the officers executing the statutes of the State, authorizing sale and transfer of these bonds, it may have been (though we think not) the duty of the Governor to indorse the bonds; but, in the presence of the enabling statutes authorizing sale and transfer of the bonds, we should not suppose purchasers of the securities were bound to know more than their terms expressed.

Stoney *v*. Ins. Co., 11 Paige, 635.
Farmers' Bank *v*. Butchers' Bank, 16 N. Y., 125.
Commissioners *v*. Aspinwall, 2 How., 545.
Bulkley *v*. Derby Fishing Co., 2 Conn., 255.
Safford *v*. Wyckoff, 4 Hill, 442.

As we have seen by the act of August 13, 1856, the Legislature constituted the Governor, Comptroller, and

Attorney General a Board of School Commissioners, with power to loan the Indemnity Bonds, belonging to that fund, to railroads, on certain conditions, which being complied with, the law provides:

> "Said board shall draw a warrant upon the Treasury of the State, in the name of said company, against said special school funds, for such amount of said bonds as it may be entitled to under the provisions of this act; which warrant shall state on account of what work it was drawn, shall be signed by said board of commissioners and countersigned by the Governor, and delivered to the president or other duly authorized agent of said company. Upon the presentation of such warrant or warrants to the Treasury of the State, the amount of said Indemnity Bonds called for in the same shall be delivered and transferred according to law to the president or authorized agent of said company, his receipt taken therefor, and the same charged to the special school fund."

Now, in the presence of such a statute, it would seem difficult to hold that a purchaser of bonds before maturity, from a railroad company receiving them under the law, would be bound to inquire beyond the facts necessary to confer a valid title upon the company, or that the failure of the Governor to indorse the bonds delivered and transferred by the Treasurer of the State, under authority of the warrant of the Board of Commissioners, would defeat the title of the purchaser, and enable the State to recover them in his hands.

We have seen, from Mr. Tayler's testimony, that 6 of our bonds were among the numbers of those believed by him to have been delivered, under this legislation, to the Southern Pacific Railroad Co.

4. It must be presumed that the parties who transferred these bonds to the bank were *bona fide* holders before maturity, and, according to the argument, without notice of any infirmity of title, if any existed, and therefore invested with a title valid against the world. They were, therefore, capable of transferring the same title to the Bank.

(*a*) The law, in the absence of any evidence on the subject, presumes a transfer to have been made before the instrument was due.

The transfer of a note in presumption of law is antecedent to its maturity. This doctrine has been often adjudged in England and America. For authorities, see—

Byles on Bills, 165.
2 Parsons on Bills, 9.

(*b*) The bonds presumably having been transferred to the assignors of the defendant before they were due, who took them without knowledge or notice of any supposed defect or infirmity in the title of the securities, they acquired a perfect title to them.

Goodman *v.* Simonds, 20 How., 366.
Murray *v.* Lardner, 2 Wall., 118.

(*c*) If, then, the immediate assignors of the Bank acquired a perfect title to the bonds, the same title was transferred to the present holder, though taken over-due.

The law is well settled, that the assignee of over-due negotiable paper is not affected by any infirmity in the title of an original or antecedent party, if his *immediate assignor* could have maintained an action.

Byles on Bills, 162.
Smith *v.* Hiscock, 14 Maine, 451.
Fairclough *v.* Pavia, 9 Exch., 690.
Oulds *v.* Harrison, 10 Exch., 579.

And the same rule will apply, though the present holder has such notice, if he derives his title to the instrument from a prior *bona fide* holder for value.

Dudley *v.* Littlefield, 8 Shep., 418.
Story on Notes, sec. 191.

FOURTH.

The State has established no equity enforceable against the 5.20 bonds in the hands of the Comptroller of the Treasury.

In the analysis previously presented of the pleading and evidence in this case, we have shown that the complainant has not succeeded in overcoming the answer of the Bank as to the payment of the Indemnity Bonds, and the deposit of the 5.20's with Mr. Tayler. It is not necessary to examine the subject further. If we are correct in the views presented, the bill must be dismissed. It cannot be sustained as a bill for an account of the proceeds, for it is specially directed to a recovery of the Indemnity Bonds *or* the alleged substituted securities. The case of Hardenberg (10 Wall., 68) was a different one; for there the bonds were redeemed after the bill had been filed in this court.

FIFTH.

We submit that the decree below should be reversed, and the bill dismissed.

J. HUBLEY ASHTON,
WALTER S. COX,
Of Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1873.

The First National Bank of Washington, Appellant,
vs.
THE STATE OF TEXAS, Appellee.
No. 73.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Supplemental Argument for Appellant on Rehearing.

E. R. HOAR,
J. HUBLEY ASHTON,
Of Counsel for Appellant.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1873.

The First National Bank of Washington, Appellant,
vs.
The State of Texas, Appellee.
No. 73.

Appeal from the Supreme Court of the District of Columbia.

SUPPLEMENTAL ARGUMENT FOR APPELLANT ON REHEARING.

This case now comes before the court upon an order for a reargument.

It was originally argued on the 18th of April, 1872, when, the late Mr. Justice Nelson being absent from the bench, the court consisted of eight judges.

On the 17th of March, 1873, the decree below was affirmed by a divided court.

The court, after the decision of the case of *Huntington* v. *Texas* (16 Wall., 403) in favor of the present appellant, granted its petition for a rehearing of this case.

The case of *Huntington* v. *Texas* (*supra*) was an action at law by the State of Texas against the First National Bank of Washington, and Huntington, its cashier, to recover the value of a number of Texas indemnity bonds, purchased by Huntington for the bank, under circumstances similar to those attending the purchase of the indemnity bonds claimed in this suit.

The decision in that case expressly adjudges, notwithstanding what was said in the opinion of the late Chief

Justice in *Texas* v. *White* (7 Wall., 700) and *Texas* v. *Hardenberg*, (10 Wall., 68,) that a complete and valid legal title *was* acquirable by purchasers of the indemnity bonds alienated by the usurping government of Texas, *without* the indorsement of the Governor of the State.

This decision, of course, renders it no longer doubtful that the absence of the Governor's indorsement from the bonds claimed by the State in this suit, does *not* work a failure of the title of the Bank to those bonds.

The absence of such indorsement from those bonds is *one* of the *two* grounds upon which the alleged title of the State to them is specifically rested in the present suit. (See the Bill, Rec., p. 11.)

The decision in *Huntington* v. *Texas*, therefore, removes that ground from under the State, and leaves it nothing to stand upon except the single remaining allegation, that the bonds in question were a portion of the bonds delivered to *White and Chiles* under the contract charged in the bill, and were purchased from *White and Chiles* "with *express notice* of the circumstances and manner in which the same had been obtained and converted by said *White and Chiles*, as herein set forth." (Bill, Rec., p. 11.)

We shall show that this allegation is not proved by the complainant; that it is disproved by her own evidence; and that, if it were proved, the complainant would not be entitled to the relief sought by this bill.

The Decree.

The decree of the court below, now here for review, adjudges the State of Texas entitled to payment by the Bank of the value of certain 19 Texas indemnity bonds and their coupons, ($21,075,) redeemed for the Bank at the United States treasury, with interest thereon from February 27, 1867, and, in default of such payment, directs the sale for the benefit of the State, by the defendant, Robert W. Tayler, First Comptroller of the Treasury, of certain United States 5-20 bonds deposited with him by the Bank when the indemnity bonds were redeemed, and the payment to the State of Texas of the said sum in gold coin, with interest from February 27, 1867, at 6 per cent. per annum. (Record, p. 94.)

The indemnity bonds embraced by this decree are as follows:

Numbers 4226, 4227, 4229, 4703, 4705, 4706, 4748, 4813, 4825, 4843, 4844, 4912, 4927, 4928, 4929, 4960, 4961, 4962, 4963.

This decree, we submit, errs as follows:

First. In adjudging that the State is entitled to recover the above nineteen (19) indemnity bonds and coupons, or the value thereof, upon the pleadings and proofs in this record.

Second. In adjudging that the 5–20 bonds deposited with defendant Taylor are liable in equity to the State for the satisfaction of the said indemnity bonds.

Third. In decreeing the payment of *interest* upon the value of said indemnity bonds and the coupons, at 6 per cent. per annum, from the date of their redemption at the treasury.

FIRST.

The Question of Title.

I. The character and history of the "Texas indemnity bonds" are stated by the learned reporter in *Huntington* v. *Texas*, (16 Wall., 403.)

They were five thousand coupon bonds of the United States, bearing date January 1, 1851, (numbered from No. 1 to No. 5,000,) issued by the Secretary of the Treasury under the act of Congress of September 9, 1850. (9 Stats., 446, 1005.) Each bond on its face was payable "*to bearer*," and "*transferable by delivery*." They were each "redeemable after the 31st day of December, 1864." They each bore interest at five per cent. per annum, payable on the first days of January and July, in each year, on presentation of the proper coupon. Each coupon was also payable "*to bearer.*"

Though bearing date January 1, 1851, they were not, in fact, delivered until a year afterwards. The delay in the delivery was caused by want of authority in any one to receive them on behalf of Texas. This was supplied by an act of the Legislature of Texas of December 16, 1851, which made it—

> "The duty of the Comptroller of Public Accounts to proceed to the city of Washington, District of Columbia, and receive from the Secretary of the Treasury, or other proper authority of the Government of the United States, the five millions of dollars of stock; to sign and deliver proper receipts for the same; and, when received, to deposit them in the treasury of the State of Texas, to be disposed of as may be provided by law: *Provided*, That no bond issued as aforesaid, as a portion of the said five millions of stock, payable to bearer, shall be available in the hands of any holder until the same shall have been indorsed in the city of Austin by the Governor of the State of Texas."

(1.) This act, upon its face, shows, what the subsequent legislation, disposing of these bonds, renders certain, that the *proviso* was intended to be merely temporary. It was evidently designed simply to secure the safe delivery of the bonds into the treasury of Texas. The requirement of the Governor's indorsement was made in connection with the provisions for the receipt of the bonds from the United States, and their deposit in the treasury of Texas. When they reached the treasury there was no need of restricting their negotiability, any more than of restricting that of any bonds issued by the State herself.

(2.) By no less than thirteen several and distinct enactments, commencing with an act of January 31, 1852, and closing with an act of February 11, 1860, the Legislature

16. Wal 402,
7 Wallace Texas v White

of Texas provided for the *sale or disposal of the whole five millions of these bonds.*

The provisions of these acts are recited in the original brief of appellant, on file in this case. (*Vide* Brief, pp. 27, 32.)

We now repeat the reference to the volumes of the State statutes in which they may be found. They are the acts of

January	31,	1852,	Laws Texas,	1851–'52,	p. 41.
February	13,	“	“	“	p. 97.
“	14,	“	“	“	p. 100.
“	16,	“	“	“	p. 125.
“	16,	“	“	“	p. 131.
January	31,	1854,	“	1853–'54,	p. 17.
August	13,	1856,	“	1855–'56,	p. 33.
“	28,	“	“	“	p. 65.
“	29,	“	“	“	p. 107.
December	23,	1857,	“	1857–'58,	p. 31.
February	11,	1858,	“	“	p. 149.
January	31,	1860,	“	1859–'60,	p. —.
February	11,	1860,	“	“	p. 82.

Each of these acts will be found to contain within itself, or by reference to some other act, *full and adequate authority for the sale or disposal of indemnity bonds.*

Not one of them referred to the act of December 16, 1851, nor did *any one of them contemplate an indorsement of them by the Governor.*

There were five thousand of these bonds, not distinguished, of course, one from another, except by number; and in each one of the acts now referred to, the authority to sell or dispose of a specified amount of the bonds applied to any one portion or lot of the bonds as well as to another.

Even conceding that a holder of these bonds was bound to show authority of the Legislature to the State officers to make a sale, he would *not* be obliged to show under *which* of several grants of authority, equally applicable, his title was derived. His title would be complete if sustained by *any one* of the grants.

A party purchasing these bonds, would discover, therefore, that by a long series of laws of the State of Texas, of unquestionable validity, covering the entire five thousand of them, they might have been lawfully negotiated without any indorsement by the governor. He would further see that, as those several laws did not designate any particular bonds, *any* of them might have been disposed of, under *any* of those laws, without regard to their particular numbers.

He would, therefore, purchase bonds of the United States, expressed on their face to be payable "*to bearer*," and "*transferable by delivery*," without notice of anything restricting or affecting the negotiability of the particular bonds.

(3.) It is quite clear that, when the rebellion broke out, the only bonds of this series remaining in the treasury of the State were those which had been previously appropriated by the Legislature for particular objects contemplated by the legislation to which we have referred, such as the support of schools.

The act of February 11, 1860 (*supra*) directed the comptroller of public accounts "to sell and convert into cash *the three hundred and five thousand dollars of the United States bonds now in the State treasury*, belonging to the *general State fund*, and pay the proceeds thereof into the State treasury, to go into the general State fund."

This act of 1860 made provision for the disposal of the last of the bonds remaining in the treasury to the credit of the general account.

It thus appears that in the early part of 1860 there only remained in the treasury 305 bonds *belonging to the general State fund*, and these the act of February 11, 1860, authorized the comptroller to sell and convert into cash. The presumption is that this was done during that year; so that when the rebellion broke out in 1861, the only bonds remaining in the State treasury were those which the Legislature had previously authorized to be sold, or had previously directed to be otherwise disposed of for legitimate public purposes.

It is clear, therefore, that all the indemnity bonds of the

United States in the possession of the State at the time of its secession had been appropriated before that event, by valid acts of legislation, to lawful public objects.

A person purchasing these bonds after the rebellion began would thus find that if any bonds had been put into circulation by the *de facto* authorities of the State, they might have been lawfully so put into circulation in pursuance of one or more of such valid appropriations.

(4.) We know that bonds *were* issued in 1862, under the legislation of the constitutional State government referred to, and for the legitimate objects contemplated by it.

From 1857 to 1860 several railroad companies were incorporated by the State, with a right to the benefits of the act of August 13, 1856, authorizing the indemnity bonds to be loaned to such companies. That act of 1856 constituted the Governor, Comptroller, and Attorney General, *ex officio*, a Board of School Commissioners, with power to loan the United States bonds belonging to the school fund to railroad companies. A warrant was to be drawn by the board upon the treasury, against the special school fund, in the name of the company entitled to bonds, and upon the presentation of such warrant to the treasury of the State, the amount of indemnity bonds called for in it was required to be delivered to the president or authorized agent of the company, and charged to the special school fund. (See this act in Original Brief, pp. 30, 35.)

It appears from the report of Mr. Comptroller Tayler, of 65 August 18, 1856, the Southern Pacific Railroad Company became entitled to receive 150 of the bonds, and that, in pursuance of that act, 148 bonds were delivered in 1862 to the president or agent of that company. (Mr. Tayler's official report to Secretary of Treasury was given in evidence, though not printed in this record. See Rec., pp. 38, 66.)

Some of these bonds were paid by the company to contractors for building the railroad, for services under contracts made in 1860. (Mr. Tayler's Report.)

The bonds so delivered to the Southern Pacific Railroad Company were not indorsed by the Governor.

The act of the Legislature of January 11, 1862, had repealed the requirement of the Governor's indorsement.

This was wholly unnecessary, as the requirement had been long since repealed or set aside by the acts to which we have referred passed before the rebellion.

This court has held in *Huntington* v. *Texas*, (16 Wall., 411,) that this act of January 11, 1862, was not void, and that even as to bonds issued for unlawful purposes without indorsement, holders without notice have a good title as against the State.

(5.) Mr. Comptroller Tayler, in his testimony in this case, states that the 148 bonds delivered in 1862, under the act of the State of August 15, 1856, to the Southern Pacific Railroad Company, were numbered from 4694 to 4842, inclusive. (Record, p. 35.)

Six (6) of the bonds held by the appellant, and embraced by the decree now appealed from, to wit: Nos. 4703, 4705, 4706, 4748, 4813, 4825, were, according to this testimony, therefore, among the bonds delivered, in the manner stated, to that railroad company, pursuant to the act of 1856.

These bonds never were issued or used for any unlawful purpose.

The decree as to these six (6) bonds and coupons must necessarily be reversed.

(6.) The Government refused payment during the war of the coupons of the unindorsed bonds. After the war unindorsed bonds were presented at the Treasury for redemption. The right of holders to receive payment for them was considered by Mr. Comptroller Tayler in an elaborate report of great ability to Mr. Secretary McCulloch. It was prepared on August 15, 1865.

The learned Comptroller advises that *bona fide* holders of Texan indemnity bonds, though unindorsed, were entitled to payment of them at the Treasury.

Under this report many such bonds were so paid. (See testimony of Mr. Chandler, Record, p. 86.)

The significance of this action is the subject of remark by the late Chief Justice in *Huntington* v. *Texas.* (16 Wallace, p. 412.)

All the bonds involved in this suit were purchased by the Bank after the adoption of this course by the Treasury Department, and upon the faith of its action in the premises. (Tayler, Record, pp. 30, 31; Huntington, *Ib.*, 50; Chandler, *Ib.*, 87.)

(7.) The first effort of the State to reclaim unindorsed bonds was by a personal action against Mr. McCulloch for the detention of sundry bonds, (*including nine or ten of the bonds claimed in this suit,*) instituted in the District court on January 31, 1867. (See Tayler's answer, Record, p. 18; 10 Wallace, 74.)

On February 15, 1867, the State filed a bill in this court for the specific recovery of sundry bonds against *White & Chiles*, Hardenberg, and Birch & Murray. (7 Wall., 700; 10 Wall., 71, 87.)

None of the bonds here claimed were included, it is understood, in that suit. (Mr. Tayler's answer, Rec., p. 18.)

The object of that suit was to impeach a transaction in January, 1865, between the Military Board of Texas and *White & Chiles*, by which the latter received in March, 1865, some 135 bonds.

This Military Board had taken possession, as alleged, in 1862, of a number of the bonds in the treasury, under an act of the rebel legislature.

We have seen that at that time nothing remained of the bonds in the treasury except such as had been set apart by the loyal legislature before the war for, of course, lawful public objects.

Therefore, any bonds taken possession of by the Military Board in 1862 had been appropriated *before* the war to legitimate uses of the State. But we have also seen that this board did not take possession of *all* the bonds in the treasury appropriated before the war to legitimate purposes; and that a large number of them was issued in 1862 to the Southern Pacific Railroad Company, pursuant to the act of August 13, 1856.

In the case of *Texas* v. *White*, (7 Wall., 732,) it was admitted that the bonds held by the defendants were a portion of the bonds which had come into the possession of *White & Chiles* in 1865 through the Military Board, and had been issued and used, therefore, for unlawful purposes. And it was clear that the defendant had notice of the invalidity of their issue and their unlawful use.

In the case at bar, we deny that the bonds claimed by the State were any part of those delivered to *White & Chiles* by the Military Board. And the State, it will be submitted, has adduced no evidence to maintain the allegations of her bill.

The State, in the late case of *Huntington* v. *Texas*, (16 Wall., 402,) assumed that the holders of bonds, without the indorsement of the Governor, had no title. This error the court corrected by reversing the judgment of the Supreme Court of the District. In that case the court said that to recover any such bonds the State must establish the fact of unlawful issue and use, and the further fact of notice to the defendants.

II. Such being the general history of these indemnity bonds, and the state of the legislation and decisions in regard to them, we proceed to examine briefly the pleadings and evidence in this record.

We shall submit that upon those pleadings and that evidence the decree must be reversed, and the bill dismissed.

(1.) So far as the absence of *indorsement* from the bonds is concerned, that matter has been disposed of by the decision in *Huntington* v. *Texas.* On that ground there is no failure of the title of the bank.

The only case, and the *whole* case, necessary to be considered, made in the bill and amended bill is, that they are a part of the lot of bonds charged to have been received in January, 1865, by *White & Chiles* from the Military Board under the contract alleged in the bill. The charge is that they were placed in the hands of the Bank for the purpose of *collection* from the United States, as the agent of *White & Chiles;* or that they were "*purchased from said White & Chiles by the said party, with* EXPRESS NOTICE *of the circumstances and manner in which the same had been obtained and converted by the said White & Chiles.*" (Record, p. 3, 11.)

As to *four* of the bonds, (Nos. 4960, 4961, 4962, and 4963,) the averment is that by reason of their *non-indorsement* by any Governor the title of the State was not divested, whether *they* "passed to defendants under the contract with White & Chiles, or in any other way." (Record, p. 11.)

This is complainant's whole case.

(2.) The *answers* to the bill and amended bill put in issue the matters thus charged.

Answer, Record, p. 20, folio 75; p. 23, folio 84.

Answer to amended bill, Record, p. 92, folio 321.

The *Exhibit* (A) shows that the Bank purchased all the bonds, except *three*, from Jay Cooke & Co., in December, 1865, and August and September, 1866.

The other *three* were bought, in January, 1866, from Mr. S. Wolf. The price paid for all was 98 per centum in gold. (Exhibit A, Record, p. 23.)

(3) Such being the *issues*, what are the *proofs?*

(*a*) The State, in dismissing the bill as against *White & Chiles*, admitted that the averment that the bonds were held by the Bank for collection as their *agent* was not true. (Record, p. 91.)

(*b*) The alternative averment that they were purchased *from White & Chiles* is shown to be equally untrue in the answer, which the State has not attempted on this point to disprove.

(*c*) The bonds, then, were owned *absolutely* by the bank, and were *not* bought from *White & Chiles.*

The next question is, *whether the State has proved by competent, sufficient, and satisfactory evidence, as matter of fact, that the bonds, or any of them, were parcel of the bonds transferred, as alleged, to White & Chiles, by the rebel authorities in* 1865?

In the *first* place, it will be seen, on examining the record, that it contains no proof of the *White & Chiles* contract annexed to the bill. (Record, p. 6.)

In the *second* place, we submit that the court *cannot*, under the well-settled rules of equity procedure, adjudge and judicially determine upon the testimony adduced by the State to overcome the answer, that *any* of the nineteen (19) bonds passed out of the possession of the State under that *White & Chiles* contract.

We invoke the rule:

> "In every case the answer of the defendant to a bill filed against him, upon any matter stated in the bill and responsive to it, is evidence in his own favor. Nay, the doctrine of equity goes further: for not only is such an answer proof in favor of the defendant, as to matters of fact, of which the bill seeks a disclosure from him, but it is conclusive in his favor, unless it is overcome by the *satisfactory* testimony of two opposing witnesses, or of one witness, corroborated by other circumstances and facts, which give to it a greater weight than the answer, or which are equivalent in weight to a second witness."

2 Story's Equity Jurisp., § 1528.
Slater *v.* Maxwell, 6 Wallace, 275.

Now, there is no evidence for the complainant on this point, except the *opinions* of Mr. Comptroller Tayler and Judge Paschal.

Mr. Tayler, in answer to the eighth interrogatory, says:

"From all the circumstances, my *opinion* is those were of the White & Chiles bonds. *That is only an opinion, however.*" (Record, p. 29, folio 101.)

On cross-examination:

"3 Q. Do you know, of your own knowledge, that White & Chiles, or either of them, ever saw one of these bonds?

"A. I know it only from the papers on file in the Department; that is, *from my opinion of what those papers show.*

"They are too numerous for me to present here now, and I might add, that one would have to study them very carefully, and make his *calculations* as to the different bonds.

"It would be by taking the 782 bonds that were not indorsed, and tracing them back by the evidence, into the hands of those parties who held them at different times, and ascertaining, in some instances, the particular numbers that were known to be in the hands of particular parties before the transaction between White & Chiles and the Military Board, and taking others, again, that came from the State of Texas, and *then drawing my conclusions as to what were White & Chiles' bonds.*" (Deposition of Mr. Tayler, Record, p. 37.)

Lord Mansfield said of such testimony, in the leading case of *Carter* v. *Boehm*, 3 Burr, 1905:

"It is mere opinion, which is not *evidence;* it is an opinion which, if rightly formed, could be drawn only from the same premises from which the court and jury were to determine the cause; and, therefore, it is improper and irrelevant in the mouth of a witness."

Judge Paschal's opinion professes, we understand, to be founded upon the "circumstances" stated by Mr. Tayler. (Record, p. 42, folio 147.)

Without further comment upon this testimony, we confidently submit that it is not *competent* evidence of the fact in issue; or, if competent, that it is not *sufficient* to overcome the answer, and cannot, in any event, be regarded as a satisfactory basis for a decree in a court of equity.

This court, it may be observed moreover, has said, in view of the facts in regard to the bonds, stated at the beginning of this argument, that in a contest between the State and holders of the bonds, *the presumption is in favor of the holders, and not against them.* (16 Wallace, 412.)

That presumption has not been rebutted by the State in this case, by any testimony which is receivable as evidence in a court of justice, much less by that measure and amount of evidence which a court of equity requires to overcome an answer responsive to the bill.

In the *third* place, Mr. Tayler expressly admits and states as to *four* of the bonds in question, that they were *not* of the *White & Chiles* lot.

These four bonds were Nos. 4960, 4961, 4962, and 4963. (Record, p. 32, folio 112.)

In any event, the decree as to these bonds must be reversed. No evidence of the purpose for which they may have been issued or used would have been admissible if it had been offered. Nothing is charged in the bill as to them. No proof can be offered of facts not charged in the bill. The plaintiff in equity, as at law, must recover *secundum allegata et probata.* (Story's Eq. Plead., § 257.) But no evidence was offered as to the purpose for which these four bonds were issued.

In the *fourth* place, we state that it appears on the face of the testimony of Mr. Tayler that six (6) others of the bonds in this decree were not taken by the Military Board; were not issued to *White & Chiles;* and *were* issued to the Southern Pacific Railroad Company, in pursuance of laws of the State passed prior to the rebellion.

We have already explained those laws.

The bonds so delivered in 1862 to the railroad company, under the act of 1856, were numbered, according to the testimony, from 4694 to 4842, inclusive. (Record, p. 35, folio 122.)

Now, included within these numbers are six (6) of the bonds in this decree, namely, Nos. 4703, 4705, 4706, 4748, 4813, 4825.

The decree as to those six (6) bonds and coupons, as in regard to the four (4) bonds last above mentioned, (Nos. 4960–4963, inclusive,) must, in any event, we submit, be reversed.

(*d.*) The bill alleges that the bonds in question, if bought by the Bank, were bought from White & Chiles with *express notice*, &c.

The charge that they were purchased with express notice that they were White & Chiles bonds, if, possibly, they belonged to that number, is as completely disproved as the allegation that they were purchased *from* White & Chiles.

The bonds were bought in December, 1865, and in January, August, and September, 1866.

They were not redeemed at the Treasury until February 27, 1867.

We gather from all the testimony that nobody in the Treasury Department *professed* to be able to identify the White & Chiles bonds until *after* the institution of the suit in this court in February, 1867, although the general fact of the White & Chiles transaction was known to the Department in October, 1865.

Mr. Chandler, formerly Assistant Secretary of the Treasury, states that after knowledge of that transaction reached the Department, there was a temporary suspension of the redemption of the bonds, and that all practicable efforts were made to ascertain the numbers of those particular bonds. But, he says, the numbers could not be ascertained, and, after some delay, the Department proceeded with the redemption of the Texan indemnity bonds as before, under the Comptroller's opinion. (Dep. of Mr. Chandler, Record, p. 86.)

Mr. Huntington, as Mr. Chandler states, was informed that it was impossible for the Department to give any information relative to the description or numbers of the White & Chiles bonds.

Mr. Huntington, and all others who made inquiries, were informed that the Department could not distinguish

White & Chiles bonds from other outstanding bonds, and that the Texan indemnity bonds would be redeemed in favor of loyal holders. (Record, p. 87.)

Mr. Huntington testifies that he *never bought any of those bonds without going to the Treasury, and making full and explicit inquiries about them.* (Record, p. 51, folio 177.)

Mr. S. Wolf, for whom bonds were bought, states that Mr. Huntington asked the loan of the bonds to take them over to the Treasury, to have the numbers examined as to whether they were of the White & Chiles bonds or suspected lot. (Record, p. 60, folio 207.)

It will be impossible, we think, for the court to say, upon the testimony in this record, that if the evidence should be deemed sufficient to prove that these bonds were of the White & Chiles lot, they were bought with express notice of their character as such. The answer, it will be seen, expressly denies it. (Record, p. 20.)

(*e*) We submit that there can be no recovery, in any event, unless the denial of notice in the answer is overcome by the requisite proof.

In *Huntington* v. *Texas*, (16 Wall., 412,) we understand the court to say that the State must prove not only unlawful issue and use, but also the *further fact of notice* to the defendant.

Express notice is here averred, but it is not proved.

The doctrine of constructive notice, applicable to dishonored private mercantile paper, payable to order on a day certain, cannot be applied to these public securities, under the circumstances attending them, when purchased in the open market after the day had passed when, by their tenor, they were redeemable. They were issued as *stock*, not payable to bearer on any certain day, but "*redeemable after the* 31*st day of December*, 1864." They stated that interest would be paid for fourteen years, but that *after* December, 1864, the bonds *might* be redeemed at the pleasure of the United States.

When they became *redeemable* the war was raging, and Texas, to whom they were issued, was a party to that war. This sufficiently accounted to any purchaser for the fact that they had not been redeemed at the very day when, according to their face, they might have been.

The bonds were not *dishonored*. *Dishonor* and non-payment at maturity, in the case of private mercantile paper, are not necessarily the same thing. A note on demand is mature and demandable at once, but is not dishonored until after such a lapse of time that the law considers the paper ought to have been paid, and that every one is bound to suppose that payment must have been demanded and refused within that time.

Mr. ATTORNEY GENERAL BLACK held, after full consideration, that the reason of the rule which makes ordinary bills and notes, when transferred after maturity, subject to prior equities, did not apply to United States Treasury notes, redeemable after one year from their date, and that a purchaser for value of such a note, *after* maturity, was entitled to the same protection as the *bona fide* holder of ordinary commercial paper taken before maturity. *Cessante ratione legis cessat ipsa lex.*

9 Opinions Attorneys General, 413.

Mr. Attorney General Speed also advised, in an opinion of September 4, 1865, that "an innocent holder of a '*seven-thirty*' Treasury note, transferable by delivery, stolen and transferred when past due, was entitled to payment as against the party from whom it was taken."

11 Opinions Attorneys General, 332.

This opinion Mr. McCulloch, Mr. Chandler, and Mr. Taylor testify furnished the rule for the Treasury Department during the period of the redemption of the seven-thirty notes.

That rule also was regarded by the Department as applicable strictly to the case of these Texan indemnity bonds, and was so acted upon. (Record, pp. 34, 67, 87.)

III. If the evidence were clear that these bonds *had* passed under the White & Chiles transaction, we should submit that the State ought not to recover here. This court is reviewing this decree in its capacity as a court of equity. Would it be equitable, would it be just, as between this State of Texas and this Bank, to allow the State, under the circumstances, to recover this property?

It is property acquired honestly and in good faith for a full consideration, without knowledge or notice of that transaction. It was acquired after due and full inquiry instituted at the Treasury Department, whose duty it was, as this court has said, "to ascertain and decide whether the bonds had or had not been issued in aid of the rebellion." (16 Wall., 412.)

The *bona fides* of the defendant are undeniable. And we submit, if these bonds were transferred by the rebel authorities for rebel purposes, after they were redeemable, that the people of the State of Texas ought not to be permitted, by the decree of a court of equity, to escape the inevitable consequences of their own voluntary disloyalty and treason, and inflict injury and loss upon an innocent and honest purchaser of the property.

The tendency of the decree asked for, if granted, would be to make secession easy, safe, and profitable, and to reward instead of punishing treason and rebellion.

SECOND.

The Liability of the 5-20 *Bonds.*

The proposition that the State has established no equity enforceable against the 5-20 United States bonds in the hands of Mr. Comptroller Tayler, has been sufficiently considered, in the light of the testimony, in the original brief. (Brief, pp. 14–17.)

The bill alleges a payment in form merely. The answer denies it, and alleges an absolute payment in fact. The evidence for the State does not overcome the answer, as has been fully shown in the previous argument, to which we refer the court.

THIRD.

The Question of Interest.

The court below allowed interest at six per cent. upon the gold value of the indemnity bonds ($21,075 gold) from the date of their redemption, February 27, 1867, to the time of payment. (Rec., p. 94.)

This was error, and was contrary to the decree rendered by this court in the case of *Hardenberg*, (10 Wall., 85,) where this court expressly refused to allow interest.

We have examined the final decree in manuscript in that case, rendered by this court on the 29th of November, 1869, which directs the payment to complainant, out of the proceeds of the 5-20 bonds deposited with Mr. Tayler, "*of the value of the indemnity bonds originally presented for payment by defendant, which value is found to have been* $38,250 *in coin.*"

The principal sum only, and no interest, was allowed by this court to the State in that case; and there is no reason of course why a different decree should be made, in any event, in this case.

To this extent, at all events, the decree below should be modified.

FOURTH.

We submit, finally, upon the whole case—

1st. That none of the nineteen (19) bonds embraced by the decree below are shown to have been, as charged in the bill, parcel of the number transferred to White & Chiles by the Military Board, and that the decree as to all the bonds and coupons should therefore be reversed and the bill dismissed.

2d. That the 5-20 bonds deposited with Mr. Tayler are not liable in equity to the State; and, on that ground alone, the decree should be reversed and the bill dismissed.

3d. That if the decree is not reversed as to all the bonds, it should be reversed as to the ten bonds and coupons numbered 4960 to 4963 inclusive, and 4703, 4705, 4706, 4748, 4813, 4825.

4th. That if the value of any of the bonds and coupons is deemed recoverable by the State, interest should not be allowed on the principal sum; and so far as interest is allowed by the decree appealed from, it should be, in any event, reversed.

E. R. Hoar,
J. Hubley Ashton,
Of Counsel for Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1871.

THE FIRST NATIONAL BANK ET AL., APPELLANTS,
vs.
THE STATE OF TEXAS.
} *No.* 523.

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF COUNSEL OF STATE OF TEXAS, APPELLEE.

Abstract of the Pleadings.

THE BILL AND AMENDED BILL.

The bill is brought by the State of Texas, as complainant, in its own right, against (George W. White, John Chiles) the First National Bank of Washington, Hugh McCulloch, and Robert W. Taylor, all in their own right, save Taylor, who is sued as trustee.

See Rec., pp. 1 to 6.
See Rec., pp. 8 to 15.

The bill sets out—

1. The act of Congress of 9th September, 1850.
See 9th U. S. Statutes at Large, p. 446.

2. The act of the legislature of Texas of November 20, 1850, accepting the proposal of Congress contained in act of September 9.

3. The issue of the United States bonds to amount

$5,000,000—of $1,000 each, with interest coupons of $25 each.

4. The act of the legislature of Texas of December 16, 1851, directing the State comptroller to proceed to Washington to receive the bonds, and declaring that none of the bonds should be available in the hands of any holder until endorsed in the city of Austin by the Governor of the State of Texas.

5. That a large portion of said bonds remained in the State treasury until 1861, when they were seized upon by insurgents against the United States, who organized a body called the military board to conduct the insurrection.

6. That the military board for insurrectionary purposes delivered to George W. White and John Chiles 135 or more of said bonds, then in the State treasury, and tried to dispose of 76 others in Europe for the same unlawful purpose, said contracts being void in law and passing no title.
See Rec., p. 2, foot.

7. That the bonds so passed to White and Chiles were, after past due, sold to various parties, and 33 of them were sold to First National Bank of Washington, or placed in their hands to collect for said White and Chiles, with full notice of the manner in which the latter obtained them, and in bad faith on their part.

8. The bonds have never been endorsed in such manner as to pass the title thereto out of the State of Texas.

9. That the First National Bank and H. McCulloch, well knowing that the State of Texas was claiming these bonds, agreed on or about the 15th February, 1867, that their amount should be paid to the bank on the latter's depositing securities with Comptroller Taylor, which being done, the deposit became a trust for the State of Texas; that said bonds were held by the bank, as agents of White and Chiles, or other parties who had obtained them in bad faith, and with notice; that Taylor holds the $\frac{5}{20}$ bonds as trustee of Texas; that Texas has a right to elect to take

either the original bonds or the $\frac{5}{20}$ bonds, and does elect to take the latter; that the trustee has received the interest on the $\frac{5}{20}$ bonds, and has left it in the First National Bank, they agreeing to pay interest thereon, and that all these matters and things are for the benefit and use of Texas.

10. The prayer asks an injunction prohibiting defendants from asking or receiving the amount due on said bonds from the United States; that said bonds, as well as the securities, may be delivered to the State of Texas, and if they be not in possession of defendants, that the value may be paid to Texas.

11. Annexed to the bill as an exhibit is a copy of the contract between the military organization of the insurgents and the firm of White & Chiles.

See Rec., pp. 6 and 7.

THE ANSWER OF HUGH M'CULLOCH

Denies that, as Secretary of the Treasury, he wrongfully or illegally agreed to redeem any bonds for the First National Bank, and avers that what he did do in relation to said bonds presented by the said bank, and redeemed upon the trust in the hands of Robert W. Taylor, was intended, as it was adapted, to protect the rights of the complainant and others interested, until they should be finally determined by judicial order, and that as complainant has elected to accept the trust in the hands of R. W. Taylor, he is entitled to no relief against respondent.

See Rec., pp. 16 and 17.

THE ANSWER OF R. W. TAYLOR

Avers that, prior to 27th February, 1867, the First Nation Bank had deposited in the Department for collection nineteen bonds, of which he gives the numbers.

That a claim had been preferred to said bonds and other similar bonds by the State of Texas, who had commenced suit in the United States Supreme Court to enforce the claim, and that a personal suit had been commenced against H. McCulloch for the detention of certain bonds, including nine or ten of those herein specified.

That on the 27th February, 1867, on the application of the bank, the Secretary ordered said bonds to be paid, but in view of the legal proceedings aforesaid, required a deposit of $\frac{7}{30}$ bonds to be held in trust by respondent to await the result of litigation. The proposal for this arrangement came from the bank.

In September, 1867, the $\frac{7}{30}$ bonds were, with the consent of the bank, converted into $\frac{5}{20}$ bonds, of which three of the amount of ten thousand each, viz, Nos. 577, 578, and 579, are still held by respondent.

Has no interest, save as trustee, and is willing to assign and transfer as the court may direct.

See Record, pp. 17, 18, and 19.

THE ANSWER OF THE FIRST NATIONAL BANK AND OF W. S. HUNTINGTON.

1. That complainant has no such status as one of the United States as authorizes her to bring the suit.

2. That in March, 1867, Congress passed an act declaring that Texas had no legal State government, and that the existing government was only provisional.

3. That the acts of Congress placed the State under military authority; that the military commander is the lawful Governor, and that he has not authorized this suit.
4. Denies that the suit is carried on by the authority or for the benefit of the people of Texas.

5. Admits that Texas was the owner of a certain number of bonds, and that the mode of acquiring them is correctly set forth in the bill.

6. Admits the bonds and coupons to be accurately described in the bill.

7. Denies all knowledge of the transactions between the military board and White and Chiles; and that the bonds were seized by an unlawful military combination and sold to White & Chiles to aid the rebellion.

8. Charges that if any of the bonds came through White & Chiles, that said bonds were sold and delivered to White & Chiles by the authority of the people of Texas through their *de facto* government; and that being negotiable paper it passed by delivery, and having been paid by the United States cannot now be recovered back.

9. Denies that the contract of the military board with White and Chiles was made to aid the rebellion and overthrow the United States.

10. Denies that they hold or claim any such bonds as are set forth in the bill; admits that certain bonds of such description came into their possession—some by purchase and some for collection.

11. Gives a list of all the bonds they had, designating them by their numbers, and indicating such as were owned by the bank and such as were held for collection.

12. Denies that they were in any way agents of White and Chiles, or that they purchased from them.

13. Denies that they had any notice that the bonds came through White and Chiles.

14. Bank had heard there would be a difficulty about the White and Chiles bonds, and, before purchasing, made diligent inquiry at department, &c.

15. Nobody at Treasury Department could identify these bonds as White and Chiles bonds, and bank bought them, believing they were not such.

16. Avers they knew the Secretary of the Treasury had paid many similar bonds, and give a list of such as he paid, marked schedule B.

17. Denies that when the bonds were presented to Secretary McCulloch for payment that bank knew there was suit pending, since Secretary himself could not identify the bonds as the White and Chiles bonds.

18. Admits that bank made the deposits of $\frac{7}{30}$ bonds, and avers that the Texas indemnity bonds were paid absolutely.

19. Denies that the $\frac{5}{20}$ bonds were held in trust by R. W. Taylor to answer instead of the Texas indemnity bonds; no part of which was invested in the $\frac{7}{30}$ or the $\frac{5}{20}$ bonds.

20. Denies the right of complainant to interfere either with the $\frac{7}{30}$ or the $\frac{5}{20}$ bonds.

21. Denies that the Texas indemnity bonds were only nominally redeemed, or that the others were substituted for them; avers that the Texas indemnity bonds were paid unconditionally.

22. Denies all knowledge of White and Chiles.

23. Avers that, after the institution of the suit in the United States Supreme Court, the complainant compromised with White and Chiles by a written instrument, in the hands of G. W. Paschal, by which they renounced all claim on all bonds transferred to White and Chiles, except certain bonds named, which do not include those here in controversy, and the latter are consequently released.
See Record, pp. 19 to 23.

Replication was filed July 8, 1869.
See Record, p. 28.

ABSTRACT OF THE EVIDENCE.

Robert W. Taylor, for complainant. Is first Comptroller of the Treasury. From the records of the U. S. Treasury, and by information derived from the Texas treasury, judges that the last Texas indemnity bond endorsed by Governor Sam. Houston was No. 4,218; the bonds of preceding numbers had been endorsed by some one of Houston's predecessors.

Unendorsed bonds from No. 4,281 to 4,289 were paid to Huntington, cashier of First National Bank of Washington, on September 12, 1865, for Fred. P. Stanton, who presented them, and, from all the circumstances, his opinion is these were White and Chiles bonds. The facts in the White and Chiles affair became known to him between 9th September and 1st October, 1865. Huntington, cashier, on the 13th October, 1865, sent to the department, for redemption, fourteen bonds, numbered from 4,883 to 4,895, and No. 4,913. At that time he (witness) had a copy of the White and Chiles contract, and told Huntington that Texas claimed these bonds.

At the time of the redemption of the bonds, in January 1866, Texas had brought suit against Mr. McCulloch, Secretary of the Treasury, claiming all the bonds.

The bonds that went into the arrangement with Huntington, to the effect they should be paid at the Treasury, on his giving security, were 4,960 to 4,963, inclusive; Nos. 4,927, 4,928, 4,929, 4.843, 4,844; three coupons ($25 each) of 4,843, and two of 4,844. Also, 4,705, 4,706, 4.748, 4,813, 4,825, 4,912, 4,226, 4,227, 4,229. None of these had been endorsed by a Governor of Texas. Four of the above were not White & Chiles bonds, viz: 4,960, 4,961, 4,962, 4,963, as they were in the possession of B. W. Pearce, one of the Military Board, up to the 30th June, 1865. All the others paid to the First National Bank were, in his opinion, White & Chiles bonds. Of the 5,000 bonds issued by the United States to Texas, numbered from 1 to 5,000, numbers 1 to 4,208 were paid before the rebellion, and were all endorsed by loyal Governors; 782 remained, of which 634 went into the hands of the Military Board, viz: 4,219 to 4,694, and 4,843 to 5,000. The Military Board sent to England Nos. 4,395 to 4,694—300 bonds. When the United States forces reached Austin, they found in the treasury and took possession of Nos. 4,219, 4,340 to 4,394, 4,853 to 4,878, 4,948 to 4,959, 4,964 to 4,975, 4,985 to 4,990; in all 112 bonds. 4,960 to 4,963 went into the hands of B. W. Pearce—4 bonds.

Mills, of Galveston, had 4,295 to 4,319, in all 25 bonds, whose numbers are known; he had also nine others, whose numbers are unknown. Victor & Durknitz got four, viz: 4,277 to 4,280. Oliver, of Monterey, Mexico, had twenty, viz: 4,320 to 4,339. This accounts for 474 bonds, including nine of unknown numbers in the hands of Mills, of Galveston, and leaves 160 bonds whose numbers are known, out of which White & Chiles must have received their 135; and the witness, in answer to the 48th interrogatory, gives the numbers he infers must have been issued to White & Chiles.

In cross-examination, Mr. Taylor says: The records of the department show nothing but the payment of the indemnity bonds to Huntington, and do *not* show the deposit of the $\frac{5}{20}$ bonds as security, and the trust created thereby. The bonds presented by the bank were regarded as White and Chiles bonds, and the Secretary was unwilling to pay them, except upon the deposit of the equivalent in $\frac{7}{30}$ bonds.

See Rec. pp. 28 to 41.

George W. Paschal, for complainant, says: The law requiring the endorsement of the Governor of Texas upon the bonds to make them negotiable is to be found in Paschal's Digest, art. 5,325. From an examination made in Texas and at the Treasury here, is confident the bonds paid to the bank were White & Chiles bonds. The law requiring the endorsement of the Governor was repealed, 11th February, 1862—the same day the Military Board was created.

See Rec., pp. 41 to 44.

Simon Wolf, for complainant: Received bonds from Haas & Co., New York, which he sold to Huntington. Messrs. Chase and Fessenden, while Secretaries of the Treasury, had each refused to pay the Texas indemnity bonds.

See Record, pp. 44 to 49.

W. S. Huntington, for complainant: Between the 9th September, 1865, and 9th October, 1865, heard there was trouble about the payment of the Texas indemnity bonds. Not confined to the White & Chiles bonds—it went to all. Knew that during the rebellion Secretary Chase had refused to pay the Texas indemnity bonds. Had heard there was a suit about to be brought in regard to these bonds in the United States Supreme Court, when he offered to deposit $\frac{7}{30}$ bonds as security.

See Rec., pp. 49 to 59.

Simon Wolf was re-examined, and Joseph S. Burnet was also examined for complainant. There is nothing in these depositions, apparently, of much importance.

See Rec., pp. 59 and 60.

Hugh McCulloch, for complainant, Secretary of the Treasury. In consequence of the protest of the State of Texas, and the suit, and the doubt about the bonds, he thought was due the State that, in paying any of the bonds, he should exact security. Mr. Comptroller Taylor took the security for the protection of the parties in interest, and not to protect the witness in the personal action brought against him.

Mr. Chase, Secretary of the Treasury, refused to pay bonds not endorsed by a Governor of Texas. When

Morgan presented the Peabody bonds, Mr. Comptroller Taylor wished the opinion of the Attorney-General. The question was referred to the latter, who was of opinion the bonds should be paid.

See Rec., pp. 62 to 68.

The name of the following witness is, by a misprint, made to appear in the record as Severson, instead of Swenson.

S. M. Swenson, for complainant, says: That he bought 25 Texas indemnity bonds; they were endorsed by Gov. Houston. He had information while still in Texas that the U. S. Secretary of the Treasury had published that the bonds would not be paid, and witness gave this information to the State officers and to the members of the State legislature; after leaving Texas, was several times offered unendorsed bonds, but always refused to take them; such bonds, worth on their face $1,200 in gold, were offered in New York in 1866–'67 for $1,100 in currency then much depreciated.

See Rec., pp. 68 to 70.

Edward Lambert, for complainant, says: Bought $10,000 of bonds in New York on a currency basis, but contingent on their being paid in gold; they were so paid at a profit to witness of 30 or 40 per cent.

See Rec., p. 70.

John J. Cisco, for complainant, assistant U. S. treasurer at New York. Secretary Chase ordered him not to pay any coupons of Texas indemnity bonds, except such as were attached to bonds endorsed by loyal Governors of Texas; witness gave notice of this by publication in the newspapers and by printed instructions; such bonds were presented, sent from Mexico, to demand payment of the coupons; he refused, was sued, and condemned to pay; the case did not go to the United States Supreme Court.

See Rec., p. 71.

Charles H. Patterson, for the complainant. A clerk in the office of the assistant United States treasurer at New York, gives copies of the official correspondence on the subject between Secretary Chase and Mr. Cisco during the rebellion.

See Rec., pp. 71 and 72.

James W. Throckmorton, for defendant. Was Governor of Texas for one year from June, 1866; sentiments of the people of Texas during the war were strongly in favor of the Confederacy; after suit was commenced in Supreme Court of United States, thinks Epperson, agent of Texas, made a compromise with White & Chiles; does not know what it was; deposes to the correctness of an extract in print from his address to the people.

See Rec., pp. 78 to 80.

Benj. H. Epperson, for defendant. Was agent and attorney of the State of Texas; as such, made a compromise, in writing, with regard to some bonds, not involved in the suit of State of Texas *vs.* White and Chiles in the United States Supreme Court. White & Chiles released any claim they might have on 75 bonds in the hands of Droge & Co. By arrangement with a party named Douglass, the State received $12,000 on withdrawing objection to the payment of Douglass' bonds, which he had received from White & Chiles. The latter also gave a release to eight bonds in the treasury deposited by Birch, Murrey & Co., which enabled Texas to get them.

See Rec., pp. 82 to 84.

The counsel for appellee, the State of Texas, respectfully submit the following

POINTS.

First. That the bonds claimed in the suit were passed into circulation, in the first instance, for treasonable purposes; were thereby tainted with crime of the highest character known to the law; and, consequently, no one could obtain title to them even if he bought for full value, in good faith, and without notice.

Second. That the said bonds were acquired by defendants after maturity, and are liable, in their hands, to every defence that can be set up against their title.

The prominent facts in the cause are a part of the history of the country. The United States issued five millions of dollars in bonds of $1,000 each, redeemable at the end of fourteen years, to the State of Texas. This was done under the proclamation of the President of the United States, dated the 13th day of December, 1850, to be found at p. 1005 of the 9th U. S. Statutes at Large, issued by virtue of the act of September 9, 1850, (see same volume, pp. 446 *et seq.*) The fourth paragraph of the first section of the act provides for the term of maturity of the bonds.

One year afterward, on the 16th December, 1851, the legislature of Texas authorized the State comptroller to proceed to this city to receive the bonds, and in the same act declared "that no bond issued as aforesaid as a portion of the said five millions of stock, payable to bearer, shall be available in the hands of any holder until the same shall have been endorsed, in the city of Austin, by the Governor of the State of Texas."

See Paschal's Digest of the Laws of Texas, art. 5320.

From the time Texas came into possession of the bonds until 1861 this law was invariably and strictly complied with, and every bond put into circulation by Texas was endorsed by the Governor of the State. Mr. Taylor, First

Comptroller of the Treasury, says, in answer to the second interrogatory in chief: "From records of the United States Treasury, and information from Texas treasury, judges the last bond signed by Governor Houston was No. 4218; the preceding numbers had been endorsed by some one of the Governors."

Governor Houston was deposed by the insurrectionary convention of Texas on the 16th March, 1861, (see McPherson's History of the United States during the Great Rebellion, p. 4,) and from that time the government and inhabitants of Texas were in a state of insurrection against the United States until the suppression of the rebellion in the summer of 1865.

See the Proclamation of the President of 16th August, 1861, and 11th April, 1861, 12th U. S. Statutes at Large, pp. 1258 and 1262.

"On the 11th January, 1862, the insurgent legislature of Texas repealed the act requiring the endorsement of the Governor, and on the same day provided for the organization of a military board, authorizing them to provide for the defence of the State by means of any bonds in the treasury, upon any account, to the extent of $1,000,000."

See opinion of U. S. Supreme Court in Texas *vs.* White, 7 Wallace, p. 718.

Thus the military board constituted to carry on the defence of Texas, which means to wage war against the United States, was authorized by the insurgents to pass off the bonds then in the treasury without endorsement. It follows clearly, then, that all bonds put into circulation by that board were employed for purposes of treason, and by whomsoever held are tainted with that crime.

The United States cannot be made to pay the expenses of an enemy waging war against them, which they would be compelled to do if they must pay to the holder of these bonds who procured them directly or indirectly from the military board of Texas, and the question at issue cannot be properly determined by the ordinary rules which apply to the transfer of commercial paper, for it involves matters of public policy which transcend the rights of individuals. It is true that the rule of public policy may operate harshly in certain cases, but where either the interest of the individual or those of the Government are to be sacrificed, the former must fall. If the defendant, the First National Bank, were suing the United States on one of these bonds in the Court of Claims, would it not be a complete defence for the United States to say, you received the bond indirectly from the Texas military board, who issued it to aid in destroying the Government; no such transfer can be recognized; the Government is not legally bound to pay its enemies' expenses in the war, and you must be turned out of court, as having no title to the bond that can authorize you to sue.

The act of the military board of Texas in putting these bonds into circulation comes directly within the prohibitions of the act of 6th August, 1861, entitled "An act to confiscate property used for insurrectionary purposes," (12 U. S. Statutes at Large, p. 319,) which says: "If any person or persons, his, her, or their agent, attorney, or employee, shall purchase or acquire, sell, or give any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed in aiding, abetting, or promoting such insurrection, &c., &c., all such property is hereby declared to be lawful subject of prize and capture wherever found, and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

Now, the military board took possession of the bonds in question, and claiming to be the owner of them, disposed of them in aid of the rebellion. The act was one which could, by reason of the law just quoted, confer no title on any transferee, near or remote. The act declares the forfeiture of the propery when transferred for such purposes, and the moment the prohibited act is done the title of the property is by law divested, and no one can take it.

See Foster *vs.* McKinnon, vol. IV, Court of Com. Pleas Reps., p. 704, parts 9 and 10, Law Reports, Johnson, Philad.

See U. S. *vs.* 1,960 bags of coffee, 8 Cranch, U. S. S. C. Rep., p. 404, *et seq.*

See Gelston *vs.* Hoyt, 3 Wheaton, 311.

See Caldwell *vs.* The U. S., 8 Howard, p. 381–2.

See United States *vs.* 56 barrels whiskey, 6th Am. Law Reg., Nov., 1866, p. 32.

See The Ouachita Cotton, 6 Wallace, p. 532.

Another act of Congress is also applicable, that of 17th July, 1862, 12th U. S. Statutes at Large, page 589, the 5th section of which provides, "that to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same and the proceeds for the support of the army of the United States." This section specifies such persons as the Military Board are, in its fifth clause, page 590, while the sixth section of the act declares that if, after proclamation and warning of sixty days, such persons do not return to their allegiance to the United States, all the estate and property, money, stocks, and credits of such persons shall be liable to seizure as aforesaid, and it shall be the duty of the President to seize and use them as aforesaid, or the proceeds thereof. And all sales, transfers, and conveyances of any such property after the expiration of the said sixty days from the date of such warning and proclamation shall be null and void.

The military board, then, could not transfer these bonds; the act was a nullity, and no title can be obtained by any one. (See the case of McKee *vs.* the United States, 8th Wallace, 167.)

From these premises it results that the source of the defendant's title is tainted with treason, and its recognition by this court forbidden by the most imperative considerations of public policy, as well as by the positive legislation of Congress.

This brings us to the consideration of the second proposition.

The bonds in question fell due on the first of January, 1865.

The contract of the military board of Texas with White and Chiles is dated 12th January, 1865; so that all the bonds received by these parties, and now held by defendants, were, of course, received after maturity.

The proof is, that all the bonds held by defendant, except four, came through White & Chiles, as is shown by the deposition of Comptroller Taylor, in his answer to the 48th interrogatory; and he shows also that the four bonds, numbered 4,960, 4,961, 4,962, and 4,963, were in the hands of N. B. Pearce, one of the military board, as late as June 30, 1865. (See Mr. Taylor's answer to 28th interrogatory.) This shows that defendants received all the bonds after maturity.

Now, such a bond is, in all respects, identical with a bill of exchange or promissory note, being an unconditional obligation to pay a sum of money to a particular person, or his order, at a fixed date; and as such it is subject, in the hands of a holder who takes it after maturity, to all its equities.

See the Opinion of Sir R. Malins, V. C., *In re* Overend, Gurney & Co., Equity Cases, vol. 6, pp. *359 to *362.

See *In re* European Bank, *ex parte* Oriental Commercial Bank, Chancery Appeal, vol. 5, p. *358.

The equity attaching to these bonds when defendants took them was this: that a body of insurgents having superseded by armed force the constitutional and lawful government of Texas, took possession of the property of the State, and the title of the State not being divested by that unlawful act, can be urged successfully against parties taking the bonds after maturity, as the defendants did.

The matters embraced under the second of the above propositions, as well as all the questions arising under the objections argued in the answer of the bank against the right of the State of Texas to stand in judgment, have been fully discussed and determined in our favor by the Supreme Court of the United States, in the case of Texas *vs.* White & Chiles, (7 Wallace, 700,) to which we refer your honors, as relieving us from the necessity of arguing further the points involved in the present case.

The appeal in this case was evidently taken for delay merely, and we have asked that the decree of the lower court be affirmed, with the highest rate of interest and damage.

Respectfully submitted.

R. T. MERRICK,
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18 Gratton - 3~~79~~ -

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Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 73.

THE FIRST NATIONAL BANK OF WASHINGTON AND WILLIAM S. HUNTINGTON, APPELLANT,

vs.

THE STATE OF TEXAS.

BRIEF OF COUNSEL FOR APPELLEE.

T. J. DURANT,
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Judd & Detweiler, Printers.

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THE FIRST NATIONAL BANK OF WASHINGTON
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BRIEF OF COUNSEL FOR APPELLEE.

By virtue of the authority contained in the act of Congress of September 9th, 1850, the Secretary of the Treasury issued to the State of Texas five million dollars of bonds denominated "Texan ~~Underwriter~~ indemnity Stock" in sums of one thousand dollars each, bearing date January 1st, 1851.

The language of the bond is as follows: "It is hereby " certified that the United States of America are indebted " unto the State of Texas or bearer in the sum of one thou- " sand dollars, redeemable after the 31st day of December, " 1864, with interest at five *per centum per annum*, payable " semi-annually, on the first days of January and July in " each year, at the Treasury of the United States on presen- " tation and surrender of the proper coupons hereto annexed. " This debt is authorized by act of Congress, approved Sep- " tember 9th, 1850. It is recorded in the office of the Reg-

"ister of the United States Treasury, and is transferable on "delivery. Washington, January 1st, 1851."

The coupon states that there is "due from the United States to the bearer twenty-five dollars" for a designated six months' interest on a bond specified by number.

By act of the Legislature of Texas of December 16th, 1851, the comptroller of public account was authorized and directed to receive the said bonds from the Secretary of the Treasury of the United States, and deposit them in the treasury of the State of Texas, and said act further provided as follows: "*That no bond issued as aforesaid as a portion of said five millions of stock, payable to bearer, shall be available in the hands of any holder until the same shall have been endorsed in the city of Austin by the Governor of Texas.*"

The bonds, numbered from 1 to 4218, inclusive, *had been endorsed by a Governor of Texas, in accordance with the provisions of the aforegoing act,* and disposed of before active rebellion in that State, and have been redeemed at the Treasury of the United States.

This left in the treasury of the State, at the breaking out of the rebellion, 782 bonds, numbered from 4218 to 5,000, inclusive.

On the 16th of March, 1861, the insurgent convention of Texas, having previously declared the adoption of the secession ordinance, and that Texas had withdrawn from the Union of the States under the Federal Constitution, passed an ordinance declaring that whereas Sam Houston, Governor of the State, and E. W. Care, Secretary of State, had refused or omitted to take the oath prescribed, their offices were vacant; that the Lieutenant Governor would exercise the authority and perform the duties appertaining to the office of Governor; and that the deposed officers would deliver and turn over to their successors in office the great seal of the State, and all papers, archives, and property in their possession belonging or appertaining to the State.

Thus was inaugurated the rebel government of Texas, and under the direction and by the orders of the convention, the duly-qualified officers of the State were deposed, and its property, including the bonds above referred to and in question in the case, were seized by the insurgents.

Of the 782 bonds found by the insurgents in the treasury of the State, 148, numbered from 4694 to 4842, inclusive, were claimed by the Pacific Railroad Company, and delivered to that corporation; and the remaining 634, numbered from 4219 to 4694, inclusive, and from 4843 to 5,000, inclusive, were delivered to an organization known as "The Military Board," established in the rebel State under the authority of the following acts of the Insurgent Legislature, to be negotiated and disposed of by said board in execution of the trust and duty imposed upon it by said acts.

CHAP. LVI.

AN ACT to provide arms and ammunition, and for the manufacture of arms and ordnance for the military defence of the State.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That five hundred thousand dollars of the bonds authorized to be issued by "An act authorizing a loan, and imposing a specific tax, to meet the principal and interest thereof, under the provisions of the thirty-third section of the seventh article of the Constitution of the State," approved April 8th, 1861, is hereby appropriated, for the purpose of procuring arms and ammunition, and for the manufacture of arms and ordnance for the military defence of the State.

SEC. 2. The Governor, Comptroller, and Treasurer, are hereby created a military board, any two of whom may act, for the purpose of disposing of said bonds, in any manner they may see proper, in order to accomplish the objects mentioned in the preceding section. Said board may sell the bonds for money, and then buy the arms and ammunition, or negotiate the bonds for arms and ammunition, or for anything else in order to carry out the provisions of the first section of this act.

SEC. 3. That said military board shall have the power to appoint one or more agents to negotiate said bonds, and to purchase said arms and ammunition, and to superintend the manufacture of arms and ordnance. Such agent or agents shall be governed in his or their negotiations by the instructions of said military board.

SEC. 4. Such agent or agents shall be entitled to such reasonable compensation for his or their services as shall be agreed upon between him or them and said military board.

SEC. 5. That said military board may, in their discretion, establish a foundry for the manufacture of ordnance, and one or more manufactories of small arms, to be located at such place or places as said board may select.

SEC. 6. That the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose of carrying out the provisions of this act.

SEC. 7. That this act shall take effect and be in force from and after its passage.

Approved January 11th, 1862.

CHAP. LXV.

AN ACT to repeal a certain act herein mentioned.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That an act to provide for the reception and deposit of a portion of the indemnity due the State of Texas by the United States for the sale of a portion of her northwestern territory, under the provisions of an act of Congress, approved September 9th, 1850, which act of the Legislature was approved December 16th, 1851, is hereby repealed, but without prejudice to any vested rights that may have arisen from said act. And this act shall take effect and be in force from its passage.

Approved January 11th, 1862.

Chap. LXXXI.

AN ACT to provide funds for military purposes.

Section 1. *Be it enacted by the Legislature of the State of Texas,* That the Governor, Comptroller, and Treasurer shall constitute a military board; and a majority of said board shall have the power to provide for the defence of the State by means of any bonds and coupons which may be in the treasury on any account, and may so use such funds or their proceeds; and therefor may sell, hypothecate, or barter such bonds and coupons, provided such disposals shall not exceed the amount of one million of dollars of such bonds and coupons; and that they shall not be disposed of at any discount greater than twenty per cent. of their face amounts.

Sec. 2. Any bonds which may be disposed of under the provisions of this act, shall be substituted by equal amounts of any bonds of the Confederate States of America that may be obtained by this State, and the bonds so substituted, respectively, in all respects, shall be in place of the funds disposed of as aforesaid.

Sec. 3. That this act be in force from and after its passage.

Approved January 11, 1862.

By the act approved December 16, 1863, Ch. XXXIX, entitled "An act to reorganize the military board of the State of Texas," it was provided that the board should thereafter consist of the Governor and two other members appointed by him, and its powers were extended "to the control of all public works and supplies, and to the aid of producing within the State by the importation of articles necessary and proper for such aid." But this act does not change the character of the board or alter the purpose for which it was originally organized. In Texas *vs.* White and

Chiles, 7 Wall, 734, this Court said: "The enlarged powers of the board appear to us to have been conferred in furtherance of its main purpose—of war against the United States." The opinion of the Court in this particular has not been questioned in any subsequent decision.

The bonds that came into possession of the military board were disposed of as follows:

Three hundred, numbered from 4395 to 4695, inclusive, were sent to England, in charge of an agent of the board, in 1862, and there negotiated—of which 149, numbered from 4395 to 4573, were sold to George Peabody & Co., and have been redeemed. The others—one hundred and fifty-one—are still in England, and proceedings instituted by the State of Texas in assertion of her right to them are now pending.

One hundred and twelve, numbered as follows: 4219, 4340, to 4394; 4853 to 4878; 4948 to 4959; 4964 to 4975; 4985 to 4990, were recovered by the United States military authorities at the close of the war, and delivered to the State of Texas.

The others were disposed of by the military board to different parties, under the said acts of the Insurgent Legislature, and among them *thirteen* of the *nineteen* embraced in the decree in this case.

The nineteen bonds embraced in the decree in this case are numbered as follows: 4226, 4227, 4229, [4703, 4705, 4706, 4748, 4813, 4825,] 4843, 4844, 4912, 4927, 4928, 4929, 4960, 4961, 4962, 4963.

Six of said bonds, viz: 4703, 4705, 4706, 4748, 4813, and 4825, appear, from the evidence of Comptroller Taylor, never to have been in possession of the military board, but were claimed by the Southern Pacific Railroad Company, under acts of the Legislature of Texas passed prior to the rebellion. Though delivered contrary to law, and not duly transferred, the counsel for the State are directed by the Governor to waive any right to recover from these defendants on account of said bonds, without prejudice to the right of the State as against the Railroad Company, further than in a settlement already made in regard thereto between the State and said company.

Four of said bonds, viz: 4960 to 4963, inclusive, were in the possession of B. W. Pease, one of the military board, up to the 30th of June, 1865.

The residue of the bonds embraced in the decree are shown to be what are known as White & Chiles bonds, and were delivered to White & Chiles under their contract with the military board, bearing date the 12th day of January, 1865.

The questions involved in this case were all decided by the court in the case of *The State of Texas* vs. *White & Chiles*, 7 Wall. They again came before the court in the case of *Texas* v. *Hardenburgh*, 10 Wall., in which the court, referring to the opinion in *White & Chiles*, says:

> "This conclusion leaves but one question for consideration, namely, whether Hardenburgh at the time he purchased the bonds had notice of the equity of the State of Texas. This question was not concluded by the decree, but it was *fully considered by the court upon the former argument*, and our conclusion, as stated in the opinion, as then delivered, that Hardenburgh, as well as the other purchasers of indemnity

bonds about the same time, was affected by such notice. We will not restate what we then said; it is only necessary to say, that we have reconsidered the grounds of that decision, and are still satisfied with it."

The expressions in the opinion delivered in *White & Chiles*, and referred to in the above extract, will be found on page 732, 7 Wall., and are as follows:

> "We think it clear, that if a State, by a public act of her Legislature, imposes restrictions upon the alienation of her property, that every person who takes a transfer of such property must be held affected by notice of them. Alienation, in disregard of such restrictions, can convey no title to the alienee."

The opinion of the court in the subsequent case of *Huntington* vs. *Texas*, 16 Wall., whilst generally reaffirming certain fundamental principles announced in the preceding cases, qualifies and "explains" them, and regulates their application.

The propositions reaffirmed are distinctly set out in the opinion, and are as follows:

> 1. "That when a State by public statute requires the endorsement of its Governor as a prerequisite to the valid transfer of bonds belonging to it, and payable to itself or bearer, the holder of such bonds, without such endorsement, will have no title as against the State, *unless he can show the consent of the State otherwise given to the transfer*."
>
> 2. "That an act repealing the statute requiring the endorsement of the Governor, passed by the Legislature when the State is in rebellion against the United States, is a nullity as *to bonds issued without such endorsement*, *and for the purpose of aiding the rebellion*."

3. "That such bonds remained the property of the State, and may be reclaimed, or the proceeds thereof recovered, in a proper action by that State, when the rebellion has ceased, against any one in possession of the same *with notice of the intent with which they were issued.*"

4. "That the existence of the rebellion at the time of the repealing act was a public fact, with notice of which all persons were charged, and that when the bonds were purchased, after they had become payable, the purchaser took them, subject to all the equitable rights of the State when its relation to the Union had been restored."

I.

It is conceded that all persons who dealt with the bonds made payable *on their face* to the State of Texas had notice of her public law requring the endorsement of her Governor as a prerequisite to their valid transfer, *if any such law existed.*

Huntington vs. *Texas.*
The State of Illinois vs. *Delafield*, 8 Paige, 526, and 2 Hill, 159.

In the case referred to, the agents of the State of Illinois were authorized to sell certain bonds of the State. They sold a portion of her bonds, and stipulated to receive part of the purchase money in cash, giving a credit for the residue. The State of Illinois filed a bill in the court of New York, seeking to restrain the sale of the bonds by the parties who had purchased them from the agents of the State, on the ground that the agents had transcended their authority, and praying that the bonds might be delivered over to the State. The court held that the agents who were authorized to sell possessed no authority to sell upon any other terms than for cash, and that having sold upon credit, they transcended their power, and could transfer no title; and decided that the purchasers, otherwise innocent in the transaction than from a presumed knowledge of a public law in Illinois, should be required to deliver the bonds to the State.

II.

It is submitted, as originally determined by this Court, that the act of Jan'y 11, 1862, repealing the act prohibiting alienation without the endorsement of the Governor, having been passed by the insurgent Legislature of Texas when the State was in rebellion, and for the clear, distinct, and manifest purpose of aiding the rebellion, *is a nullity.*

Whatever power the insurgent governments of the States in rebellion may have possessed as *de facto* governments, the limits within which their acts should be treated as valid have never been extended so far as to embrace such as were in furtherance and support of the rebellion against the United States.

But that all acts designed for that purpose are to be treated as absolute nullities by the United States Government, and the restored government *de jure* of the State, is in accordance with a well-settled principle of public law repeatedly pronounced by this Court.

"The doctrine of secession is a doctrine of treason, and practical secession is practical treason, seeking to give itself triumph by revolutionary violence."—*White* vs. *Hart*, 13 Wall., 650.

At no time were the rebellious States free from the obligations imposed by the Federal Constitution; their ordinances of secession were void, and could neither give rights nor impair obligations; and it necessarily follows that any ordinance or legislative act adopted to secure the authority of the said ordinances of secession and achieve the triumph of revolutionary violence, must be a nullity.

White vs. *Hart*, 13 Wall.
Hanuer vs. *Woodruff*, 15 Wall.

What was the object and purpose for which the repealing act was adopted?

The insurgents had seized the bonds found in the treasury of the State.

They had organized a State government.

That ~~But~~ government was engaged in a revolutionary struggle to establish and maintain its existence. It was using every resource at its command in the contest; discredited as a revolutionary organization, and unable to deal openly in the market of the world, it was adopting every possible device to raise means for carrying on the war.

On the 11th January, 1862, its Legislature passed an act establishing a military board "to provide funds for military purposes," and placed the indemnity bonds and coupons, and all other bonds and coupons in its treasury, in the possession and control of this board, to be used "*to provide for the defence of the State;*" and authorized said board "*to sell, hypothecate, or barter such bonds and coupons,*" and apply the proceeds to the purpose indicated. And on the *same day* the act was passed repealing the act requiring the endorsement of the Governor of the State as a prerequisite to the transfer of the bonds.

Can a reasonable mind doubt as to the intent and purpose of the repealing act? It is not too manifest for argument or question that it was designed to facilitate the military board in negotiating the bonds? And, if it was so designed, was it not an act directly in aid of the execution of the trust and agency of the board to raise funds for military purposes, and in support of the insurgent cause?

Had the repealing act been embodied in the act creating the board and directing it to dispose of the bonds, its purpose and intent would not have been more apparent and distinct. The insurgent authorities realized that if the endorsement of the Governor of an insurgent State appeared upon the bonds, their negotiation, either at home or abroad, would be difficult if not impossible; for in such a case the complicity of the purchaser with the rebellion would be open and avowed, and they reasoned precisely as the appellants in this case reason—that if such endorsement did not appear on the bond, then the purchaser, though conscious that he was giving direct aid to the rebellion by negotiating rebel securities, would enjoy a probable security from loss by reason of the difficulty of his detection in the hiding places of commercial law.

In part, the plan succeeded, both in this country and in England. Immediately upon the passage of the law, the bonds were put upon the market in both countries by the agents of the board, and found purchasers, though at rates greatly less than their value, and when all other securities of the United States were demanding a premium. Their negotiation in this country was much embarrassed by the prompt action of the then Secretary of the Treasury in giving notice that their transfer would not be recognized as valid in the absence of the endorsement of a loyal Governor of Texas. (Record, pp. 72, 73, 74, 75, and evidence of George W. Paschal, Record, p. 42.)

If the repealing act was a nullity, then the original act requiring the endorsement of the Governor was in force, and all persons dealing in the bonds took them with notice of the requirement and provisions of this act.

III.

But the court in the opinion in *Huntington* vs. *Texas* apparently decides that the repealing act, though not valid, is not "absolutely void." It is difficult to perceive how an act such as this, assailed upon the grounds upon which this is assailed, can occupy that intermediate position between good and evil that seems to be assigned to it.

If, however, it be admitted that this act is not "absolutely void," and that the title of the State to bonds not endorsed might be divested, if the bonds were "issued and used for a lawful purpose," then it is submitted that the burthen of showing that they were so issued and used is upon the holder.

Otherwise the repealing act is not only not "absolutely void," but it is *absolutely valid*.

The court in the course of the opinion in *Huntington* vs. *Texas*, explaining the general propositions before quoted, says: "If the Government was in the actual control of the State, the validity of its alienation must depend on the object and purpose of it. If that was just in itself and laudable, the alienation was valid; if, on the contrary, the object and purpose were to break up the Union and overthrow the constitutional Government of the Union, the alienation was invalid. So the most that could be said of the absence of the endorsement of the Governor was that it raised *a presumption against the validity of the alienation*—not that no title to the bonds could be obtained without such endorsement."

Where a defect or infirmity in the title to a piece of commercial paper *appears on its face*, raising a presumption against the validity of its transfer, the party taking it will, in a case in which his title is questioned, be required to prove that the transfer was valid.

Andrews *vs.* Pond, 13 Peters, 65.
Goodman *vs.* Simonds, 20 H., 365.

IV.

But if the fact of the absence of an endorsement upon the bonds would not impose on the holder the burthen of proving that they had been "issued and used for a lawful purpose," proof by the State that they had been issued and used for an unlawful purpose, and "to break up the Union and overthrow the constitutional Government of the Union," would be all that could be required to establish the invalidity of the transfer.

What was the purpose and object for which the military board issued and used the bonds that came into its possession?

That purpose and object are declared in the act of the Insurgent Legislature creating the board and placing the bonds in its possession.

The board received them in trust, to be used in aid of the rebellion, and it is to be presumed that they were used in execution of that trust.

V.

The counsel for the appellant, to meet the presumption arising from the non-endorsement of the bonds, refer in their brief to various acts of the Legislature of Texas, passed prior to the rebellion, authorizing the sale or disposal of the indemnity bonds, none of which, they contend, required the endorsement of the Governor as a prerequisite to transfer; and they conclude, that as the State had, by laws of unquestioned validity, authorized the issue of bonds unendorsed, no presumption can arise by reason of the absence of an endorsement.

It is unnecessary to inquire whether the conclusion of law is correct or not, as it is founded on an erroneous impression of the fact.

Upon an examination of the laws ref [illegible] ble over a period of ~~twelve~~ years, from Ja [illegible] tle ruary, 1860, it will be found that not [illegible] nd the act of January 31, 1852 authorize [illegible] any of these bonds, otherwise than as provided in the act of 1851.

The restrictions imposed by this act on the negotiability of the bonds was designed by the State, not for a temporary purpose, as seems to be supposed, but as a permanent protection for her title against spoliation.

Subsequent laws, appropriating the bonds to various purposes, contain no reference whatever to the *manner* of transfer, except the act of January 31, 1852 entitled "An act to provide for the liquidation and payment of the debt of the late Republic of Texas." This, act, after dedicating a certain portion of the bonds to the purposes indicated in the title, and directing the manner of payment, provides as follows:

> "And the comptroller of public accounts for the State of Texas is hereby authorized to transfer a sufficient amount of said stock, when the transfer shall be necessary, *by simple endorsement*, attested by his seal of office, to be countersigned by the treasurer of the State, which transfer shall divest the title of the State of Texas of all interest in such bonds or stock, and invest the same in the holder thereof."

The counsel for appellants refer to this act as plainly ignoring the proviso to the act of December 16, 1851.

Whether the "endorsement" referred to was the endorsement of the Governor—*which was the endorsement subsequently placed upon the bonds*—or ~~is~~ the "endorsement" of the comptroller, the act plainly shows that it was the settled purpose of the State to restrict the negotiability of these bonds, and that her title thereto should not be divested otherwise than by certain official formalities.

The other acts referred to dedicate the bonds, and leave their transfer as regulated by the existing law.

Such was the construction given to them by the authorities of Texas, and up to date of the rebellion not a single bond of the entire *five thousand* had ever been issued without the endorsement of the Governor of the State, in accordance with the provisions of the act of December 16, 1851.

Comptroller Tayler, in his evidence, (Record, p. 35,) says that bonds numbered from "1 to 4218 were endorsed by loyal Governors of the State of Texas, and disposed of prior to active rebellion in that State."

The remaining 782 were in the treasury of the State at the time it was seized upon by the insurgents. (Record, p 40.)

Of these, *one hundred and forty-eight* were delivered to the Southern Pacific Railroad Company by the insurgent government, on the claim of that company, under laws passed prior to the rebellion, and the remaining *six hundred and thirty-two* were taken possession of by the military board.

The acts on which the claim of the Southern Pacific Railroad Company was founded dedicated the bonds to that company in certain contingencies, but did not authorize the transfer of the legal title of the State in any event, otherwise than by the endorsement of the Governor.

The particular act under which the said 148 bonds were demanded by the railroad company is the act of August 13, 1856, referred to in the brief of Counsel for Appellants, and by that act it is expressly provided that when the contingency entitling the railroad company to have the bonds issued under the act has arisen "the amount of said indemnity bonds called for in the same shall be *delivered and transferred, according to law*, to the president or authorized agent of said company, his receipt taken therefor, and the same charged to the special school fund."

How transferred *according to law?* According to what other law than the act of December 16, 1851, providing that such transfer could only be made by the endorsement of the Governor of the State?

They were delivered to the party having an equitable claim under the act of August 13, 1856; but the legal title of the State was not divested by any valid transfer, and without such valid transfer the delivery was illegal and contrary to the law. They were delivered by the insurgent combination by which they had been seized, and not by the legal State to which they belonged, in direct violation of the law, for the repealing act had not passed at that time. This act passed on the same day the military board was organized, and that board took possession under the direction of its organic law of all the bonds that remained in the treasury at the time it came into existence.

Therefore, though these bonds may have been delivered for a lawful and proper purpose, this fact cannot be urged against the State in derogation of her rights to bonds issued and used for an unlawful purpose, or, as an answer to the presumption arising in regard to others from the fact of their non-endorsement by a Governor of the State.

From the opinion in the case of *Huntington* vs. *Texas*, it seems that the court was under the impression that a large portion of the bonds issued without the endorsement of the Governor were lawfully issued for legitimate objects, and were applied to legitimate purposes. And it is from this impression *alone* that the conclusion is drawn against the effect of the absence of an endorsement to create a presumption adverse to the validity of the transfer.

But the fact is, as shown by the record in this case, that every bond of the entire five thousand issued prior to the rebellion had been endorsed as required by law; that none had ever been lawfully issued, at any time, without such endorsement; and that all that had been issued without such endorsement, had been issued by a military organization in aid of the rebellion, except the *one hundred and forty-eight* last referred to as having been issued to the railroad company.

It is submitted that upon this state of facts, the absence of the endorsement of the Governor raises a presumption against the validity of the alienation of the bond; and that the cause of justice would best be subserved by giving effect to this presumption, and requiring the holder of a bond not endorsed to prove that it had been issued by the State for some lawful and proper purpose.

VI.

Circumstances having been proved establishing illegality in the original transfer of the bonds, the burthen of showing that he gave value for them *before maturity* is cast upon the holder; and if it appear that he took them after they became due, he will be regarded as having taken them subject to all the rights and equities of the State, and cannot protect a defective title by any rule of commercial law.

Smith *vs.* Lac County, 11 Wall., 146.
Andrews *vs.* Pond, 13 Peters, 65.
Swift *vs.* Tyson, 16 Peters, 1.
Goodman *vs.* Simonds, 20 Hd., 365.
Lardner *vs.* Murray, 2 Wall, 121.
Brown *vs.* Davies, 3 Term, 80.
Tyler *vs.* Mather, *Ibid.*, 84.
Down *vs.* Halling, 4 Barn. and Cress., 332.
In re European Bank, Law Reports, 5 Chancery, 358.
Ex parte Oriental Commercial Bank.

The case of *Smith* vs. *Lac County* was submitted to the court without a jury, and the court found certain facts tending to establish fraud in the inception of the bonds in question, and also found that the plaintiff became the holder of the coupons sued on "*by transfer thereof to him before maturity;*" and this court, in reviewing the decision of the circuit court, says:

> "Treating the bonds and coupons sued on in this case, which are payable to bearer, as negotiable paper, and conceding to its fullest extent the protection which commercial usage throws around such paper in the hands of a *bona fide* purchaser for value before maturity, it is, nevertheless, undoubtedly true, that circumstances may be shown in connection with the origin of such paper which will devolve upon the holder the burden of showing that he did give value for it before maturity."

In the language of Mr. Justice Clifford, dissenting, "it was not found, nor could it be, that he [the holder] had any notice whatever of the supposed irregularities in the bonds." (Page 156.)

The case of *Down & Halling* meets all the objections urged against the soundness of the proposition last stated, and its application to the claim of the State, as set out in this record.

In that case, a check, lost by the owner, was tendered by a party to a shop-keeper, in payment of goods, and accepted by him, five days after its date. He obtained the money on it from the bank upon which it was drawn, and the owner was allowed to recover the proceeds from the shop-keeper. It was held that a "party who takes such an instrument so long after its date or maturity, must show that *the party from whom he took it had a good title.*"

But it is contended that the doctrine of constructive notice, applicable to ordinary mercantile paper, cannot be applied to the securities in question in this case.

Public securities of the United States have been uniformly treated by this court as subject to the general principles of commercial law, (*Lardner* vs. *Murray*, 2 Wall.; *Texas* vs. *White*, 7 Wall.,) and no sufficient reason has been suggested why the rule that ordinary commercial paper, when transferred after maturity is subject to prior equities, should not apply to the bonds of the United States. The reason of the rule is, that according to usage and custom commercial paper is paid at maturity, and, therefore, when found in the market after maturing there is a presumption that there is some imperfection in the obligation or the title. If it were shown to be the habit of the United States to make default in the payment of their bonds and coupons, there might be some force in the position assumed by the counsel for the appellants. But such is not the habit of the United States; on the contrary, their obligations are uniformly met at maturity, and the Government has never failed to pay its bonds as they matured, or to pay the interest coupons on such bonds as they became due and payable. Everybody in the country knows that the holder of such coupons can have them paid in full, dollar for dollar, the very day they mature, in any of the principal commercial cities of the nation. Such being the usage and custom of the United States, why should not the same presumptions attach to their bonds and coupons when offered for negotiation in the market, after maturity, that attach to ordinary commercial paper under similar circumstances?

In point of fact, these presumptions did attach to the Texas indemnity bonds, and so affected their value that they were offered in the market of New York, in 1866 and 1867, at a discount of about *forty per cent.*, estimating the difference in the value of gold and currency at the time. (Evidence of S. M. Severson, Record, p. 69; and Edward Lambert, Record, p. 70.)

It was said in *Ayer* vs. *Hutchins*, (4 Mass., 371,) that "a note endorsed sometime after it is due furnishes a presumption that it has been dishonoured, because it may be reasonably inferred that the holder of the note would prefer receiving the money due—if payment could be had—to negotiating the note."

Was it not a reasonable inference that the holder of these overdue bonds, with four or five overdue coupons upon each of them, would, in either Washington city or New York, have got the money on them from the Government officials in those cities, authorized to make payment of public securities, rather than negotiate them, if he could have done so? And was it not known everywhere and to everybody that the United States had the money and was ready to pay to any one that might be entitled to receive it?

The cases referred to in the brief of the counsel for the appellants in 9th and 11th Opinions Attorneys General do not apply.

In each of those cases the question considered related to the negotiability of *Treasury notes* and not coupon bonds. These notes were not ordinary securities, but were designed and issued to constitute part of the circulating medium of the country.

Mr. Attorney General Black, in the opinion first referred to, says: "Treasury notes are much more closely assimilated to bank notes than any other kind of negotiable paper. Both circulate as money, and are treated as money by commercial usage. The law which requires Treasury notes to be received in payment of debts due to the United States stamps them with a higher attribute of a circulating medium than belongs to ordinary paper money; while the guarantee of the credit of the Government for their redemption gives them the advantage of greater security."

These indemnity bonds not only do not belong to the same class of securities with Treasury notes, but they are also different from the ordinary coupon bonds of the Government.

The ordinary coupon bond is made payable to *bearer* generally; these bonds are made payable to the "*State of Texas or bearer.*"

VII.

The facts in the record show that the appellants had actual notice of the invalidity of the title to these bonds at the time they purchased.

The proof is similar to that in the case of *Texas* vs. *White*, upon which the Court determined that it was "impossible to hold the defendant protected by absence of notice of want of title."

Whether the doctrine of *constructive* notice, as to overdue commercial paper be applicable to these bonds or not, the *fact* that they were overdue, that overdue unpaid coupons, covering the interest for two or three years, were attached to them, taken in connection with the uniform habit of the United States to pay their bonds and coupons at maturity, and the further fact that these bonds were offered at a heavy discount, and purchased by appellants at a discount, are facts from which the conclusion is inevitable, that the appellants had actual notice of the infirmity of the title. That overdue coupons were attached to the bonds is entitled to the same force as a fact establishing actual notice, that a formal protest attached to a note or bill of exchange would have.

It was known to appellants, *before* they purchased, that there was *some question as to the payment of the bonds,* (evidence of Wm. S. Huntington, cashier of appellant bank, Record, p. 51,) and he was "*advised there was some difficulty about the payment of the Texan bonds.*" The objection "was not confined to White & Chiles bonds." "I did not know what the objection was; I knew there was some difficulty," (p. 51.) He states that he never purchased any of the bonds until making inquiry at the Treasury Department, but his evidence shows that he received no assurances there, and was informed that payment had been "*suspended until they could examine the bonds.*" In other words, he was informed that these securities *were dishonored*, and, though due and presented, that payment had been refused. Under these circumstances, he purchased them at a discount.

"As a necessary consequence, the negotiation of these bonds became difficult; they sold much below the rates they would have commanded had the title to them been unquestioned. *They were bought, in fact, and under the circumstances could only have been bought upon speculation.* The purchasers took the risk of a bad title, hoping, doubtless, that through the action of the National Government, or of the government of Texas, it might be converted into a good one."

Texas vs. *White*, 7 Wall., 736.

VIII.

The right of the appellee to recover interest is questioned.

From the time a debt is due and payment neglected, the party is uniformly held liable for interest.

Aurora City vs. *West*, 7 Wall., 105.

If the State had title to these bonds, the money paid on them to appellants is the money of the State, wrongfully withheld.

In the case of the *State* vs. *Hardenburg*, the bonds were in the possession of Hardenburg at the time the bill was filed, and were not, therefore, redeemed until aftewards. The bill sought to enjoin their payment, and prayed that the bonds might be delivered over to the complainant.

When the decree was rendered only a short time, less probably than a year, had elapsed from the time of payment to Hardenburg, and no question was made before the Court as to interest, and it was not insisted on by the State when the decree was prepared.

IX.

The right of the State, as beneficiary, to the securities deposited by the appellants with Comptroller Tayler cannot be questioned.

The late Secretary of the Treasury, Mr. McCulloch, says, in his deposition, (Record, p. 64:) "Having been advised that certain Texan indemnity bonds had been obtained from the State of Texas by unlawful means, and having been requested by the parties representing the State of Texas to withhold payment of these bonds, and a suit having been commenced in the district court of the District of Columbia, to which suit I was made defendant, to obtain certain bonds that had been presented for payment, I thought it due to the State of Texas that if the bonds then before the Department, in regard to the propriety of the payment of which there seemed to be some question, were paid, the parties to whom payment was made should deposit with the First Comptroller *securities for the protection of those who might prove themselves to be rightful owners.*"

He, consequently, gave general directions to the Comptroller to this effect, upon which the Comptroller acted in paying the bonds in question to the appellants in this case.

(Answer of Comptroller Tayler, Record, p. 18, adopted as part of his evidence, p. 32.)

(Deposition of Joseph S. Burnet, corresponding clerk of appellant Bank; Record, p. 61.)

Without conceding that the Insurgent Government of Texas could acquire title to the bonds of the State, and still adhering to the position originally taken in the case of *White & Chiles*, that the insurrectionary combination which overthrew the lawful authorities of the State and forcibly seized upon her archives and property could neither acquire a title to such property nor transfer any title thereto which should be recognized in the courts of the United States, the counsel for the appellees have confined themselves to those questions upon which the opinions of the Court in the several cases that have come before it on the subject of this litigation seem to harmonize, and they respectfully submit—

1. That the act of the Insurgent Legislature of Texas, of January 12th, 1862, repealing the act of December 16th, 1851, requiring the endorsement of the Governor of the State as a prerequisite to the valid transfer of the indemnity bonds is a *nullity*.

2. That the absence of an endorsement by a Governor of Texas raises a presumption against the validity of the alienation of the bonds, and that the burthen of rebutting this presumption, by proof of a valid transfer of the title of the State, is devolved upon the holder.

3. That the illegality of the original transfer of the bonds having been established by the State, the burthen is devolved upon the holder of showing that he gave value for them *before maturity*.

4. That the appellants having taken the bonds after maturity, took them with constructive notice

that they had been illegally transferred, and that the title of the State had not been divested.

5. That the proof in the record establishes that appellants had actual notice of imperfection in the title to the bonds at the time they purchased.

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